International Labour Conference
88th Session 2000

Report IV (2A)

Maternity protection at work

Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)

International Labour Office Geneva

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LIST OF RECURRING ABBREVIATIONS

Argentina	UIA	Argentine Industrial Union
	CTERA	Confederation of Education Workers of Argentina
Austria	IV	Federation of Austrian Industry
	BAK	Federal Chamber of Labour
Barbados	BEC	Barbados Employers' Confederation
	CTUSAB	Congress of Trade Unions and Staff Associations of Barbados
Belgium	CNT	National Labour Council
Benin	CNP-BENIN	National Employers' Council of Benin
Brazil	CNC	National Confederation of Commerce
	CGT	General Confederation of Workers
	FS	Força Sindical
Canada	CEC	Canadian Employers Council
	CLC	Canadian Labour Congress
Chile	CONUPIA	United Trades Confederation of Small and Medium-sized Enterprise, Service and Crafts Industries of Chile
	CPC	Confederation of Production and Trade
	CUT	Single Central Organization of Workers
Cyprus	CCCI	Cyprus Chamber of Commerce and Industry
Czech Republic	CMK OS	Czech-Moravian Confederation of Trade Unions
Denmark	DA	Danish Employers' Confederation
	AC	Danish Confederation of Professionals Associations
	FTF	Salaried Employees' and Civil Servants' Confederation
	LO	Danish Confederation of Trade Unions
Ecuador	CEOCUT	Ecuadorian Confederation of United Class Organizations of Workers

Egypt	FEI	Federation of Egyptian Industries
Estonia	EATU	Estonian Association of Trade Unions
Finland	KT	Commission for Local Authority Employers
	PT	Employers' Confederation of Service Industries in Finland
	TT	Confederation of Finnish Industry and Employers
	VTML	State Employer's Office
	AKAVA	Confederation of Unions for Academic Professionals in Finland
	SAK	Central Organization of Finnish Trade Unions
	STTK	Finnish Confederation of Salaried Employees
France	MEDEF	Movement of French Enterprises
	CFDT	French Democratic Confederation of Labour
Germany	BDA	Confederation of German Employers' Associations
	DAG	German Union of Salaried Employees
	DGB	German Confederation of Trade Unions
Ghana	GEA	Ghana Employers' Association
Greece	NHCT	National Hellenic Confederation of Trade
Guatemala	CACIF	Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations
India	BMS	Bharatiya Mazdoor Sangh
	HMS	Hind Mazdoor Sabha
Italy	CGIL	Italian General Confederation of Labour
	CISL	Italian Confederation of Workers' Unions
	UIL	Italian Labour Union
Japan	NIKKEIREN	Japan Federation of Employers' Associations
	JTUC-RENGO	Japanese Trade Union Confederation
Jordan	ACI	Amman Chamber of Industry
	FJCC	Federation of Jordanian Chambers of Commerce
	GFJTU	General Federation of Jordanian Trade Unions
Korea, Republic of	KEF	Korea Employers' Federation
	FKTU	Federation of Korean Trade Unions

Lithuania	LLF	Lithuanian Labour Federation
Malaysia	MEF	Malaysian Employers Federation
	MTUC	Malaysian Trades Union Congress
Mauritius	FSCC	Federation of Public Service Trade Unions
Morocco	CDT	Democratic Confederation of Labour
	UMT	Moroccan Labour Union
Namibia	NPSM	Namibia People's Social Movement
Netherlands	VNO-NCW	Confederation of Netherlands Industry and Employers
	FNV	Netherlands Confederation of Trade Unions
New Zealand	NZEF	New Zealand Employers' Federation
	NZCTU	New Zealand Council of Trade Unions
Norway	NHO	Confederation of Norwegian Business and Industry
	LO	Confederation of Trade Unions in Norway
Pakistan	EFP	Employers' Federation of Pakistan
	PNFTU	Pakistan National Federation of Trade Unions
Poland	NSZZ "Solidarność"	Independent Self-Governing Trade Union "Solidarność"
Portugal	CAP	Confederation of Farmers of Portugal
	CIP	Confederation of Portuguese Industry
	CGTP-IN	General Confederation of Portuguese Workers
	UGT	General Union of Workers
South Africa	BSA	Business South Africa
Spain	CCOO	Trade Union Confederation of Workers' Committees
	UGT	General Union of Workers
Sweden	SAF	Swedish Employers' Confederation
Switzerland	UPS	Confederation of Swiss Employers
	FSE/VSA	Federation of Swiss Salaried Employees' Associations
	USS/SGB	Swiss Federation of Trade Unions
Thailand	ECOT	Employers' Confederation of Thailand
	ECONTHAI	Employers' Confederation of Thai Trade and Industry

Togo	CSTT	Workers' Trade Union Confederation of Togo
Turkey	TÍSK	Turkish Confederation of Employers' Associations
	TÜRK-ÍS	Confederation of Turkish Trade Unions
United Kingdom	CBI	Confederation of British Industry
United States	USCIB	US Council for International Business
Uruguay	PIT-CNT	Inter-Trade Union Assembly – Workers' National Convention
Venezuela	CODESA	Confederation of Autonomous Trade Unions
	CTV	Venezuelan Workers' Confederation

INTRODUCTION

The first discussion of the question of the revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95), took place at the 87th Session (1999) of the International Labour Conference. Following that discussion, and in accordance with article 39 of the Standing Orders of the Conference, the International Labour Office prepared and communicated to the governments of member States a report[1] containing a proposed Convention and a proposed Recommendation concerning the revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95), based on the conclusions adopted by the Conference at its 87th Session.

Governments were invited to send any amendments or comments they might wish to make so as to reach the Office by 30 November 1999 at the latest, or to inform it, by the same date, whether they considered that the proposed texts constituted a satisfactory basis for discussion by the Conference at its 88th Session (2000).

At the time of drawing up this report, the Office had received replies from the governments of the following 84 member States:[2] Argentina, Australia, Austria, Azerbaijan, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Fiji, Finland, France, Germany, Greece, Grenada, Guatemala, Hungary, Iceland, India, Indonesia, Iraq, Italy, Japan, Jordan, Kazakhstan, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Malaysia, Malta, Mauritius, Morocco, Nepal, Netherlands, Norway, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Saudi Arabia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, United Republic of Tanzania, Thailand, Togo, Tunisia, Turkey, United Arab Emirates, United Kingdom, United States, Venezuela, Zambia, Zimbabwe.

In accordance with article 39, paragraph 6, of the Standing Orders of the Conference, governments were requested to consult the most representative organizations of employers and workers before finalizing their replies and to indicate which organizations were consulted.

The governments of the following 48 member States stated that the most representative organizations of employers and workers had been consulted: Argentina, Australia, Austria, Belarus, Benin, Botswana, Brazil, Bulgaria, Canada, China, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Eritrea, Finland, France, Ghana, Greece, Guatemala, Hungary, Iceland, India, Italy, Japan, Republic of Korea,

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[1] ILO: *Maternity protection at work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)*, Report IV(1), International Labour Conference, 88th Session, Geneva, 2000.

[2] Replies that arrived too late to be included in the report may be consulted by delegates at the Conference.

Lebanon, Lithuania, Malaysia, Malta, Mauritius, Morocco, Netherlands, Pakistan, Romania, Singapore, Slovakia, Slovenia, Sri Lanka, Sweden, Syrian Arab Republic, United Republic of Tanzania, United Arab Emirates, United States, Zimbabwe.

In the case of the following 45 member States the replies of employers' and workers' organizations were incorporated into those of the government, were appended or were communicated directly to the Office: Argentina, Austria, Barbados, Benin, Brazil, Canada, Chile, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Finland, France, Germany, Greece, Guatemala, India, Italy, Japan, Jordan, Republic of Korea, Lithuania, Malaysia, Mauritius, Morocco, Namibia, Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, South Africa, Spain, Sweden, Switzerland, Thailand, Togo, Turkey, United Kingdom, United States, Uruguay, Venezuela.

To ensure that the English and French texts of the proposed Convention and proposed Recommendation concerning the revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95), are in the hands of the governments within the time limit laid down in article 39, paragraph 7, of the Standing Orders of the Conference, these texts have already been published in a separate volume, Report IV(2B), that has been sent to them. The present volume, Report IV(2A), which has been drawn up on the basis of the replies from governments and from employers' and workers' organizations, contains the essential points of their observations. It is divided into three sections: the first comprises their general observations on the proposed texts, while the second and third sections contain their observations on the proposed Convention and proposed Recommendation, with the Office commentaries on these observations.

REPLIES RECEIVED AND COMMENTARIES

The substance of the replies received on the proposed Convention and the proposed Recommendation concerning the revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95), is given below. The replies are followed, where appropriate, by brief Office commentaries.

The governments of the following 24 member States stated that they had no observations to put forward at the moment or that they considered that the proposed texts constituted a satisfactory basis for discussion at the 88th Session of the International Labour Conference: Azerbaijan, Botswana, Bulgaria, Cameroon, Costa Rica, Cuba, Cyprus, Czech Republic, Fiji, Grenada, Hungary, Iceland, India, Indonesia, Iraq, Kuwait, Lithuania, Mauritius, Morocco, Saudi Arabia, Sri Lanka, Suriname, Sweden, Zambia. Some of the countries which considered the texts a satisfactory basis for discussion also commented on the texts and replied to the questions raised by the Office commentary in Report IV(1).

General observations

ARGENTINA

Argentine Industrial Union (UIA). Conventions and Recommendations must be universal in content – i.e. general and flexible in their wording, so that they can be ratified by the majority of Members. This is important considering that neither the Maternity Protection Convention, 1919 (No. 3), nor Convention No. 103 were widely ratified. The proposed Convention is drafted in an inflexible and restrictive manner which would undoubtedly limit the number of ratifications. It would also have an adverse effect on employment opportunities for women of childbearing age.

Discussions concerning maternity protection must strike a balance between, on the one hand, protecting the safety and health of women of childbearing age and their job security during pregnancy and after childbirth and, on the other, protecting employers from additional costs, which would otherwise adversely affect employment opportunities for women. Similarly, the general principle of non-discrimination must be assured, but social security schemes must be able to set certain conditions of eligibility (length of service, income, contributions, etc.).

Given the need to promote the adoption of a widely ratifiable Convention, the UIA fully supports the proposal of the Employers' group at the first discussion that points 6 to 13 of the Proposed Conclusions in Report V(2) should be moved to the Recommendation and replaced with an amended text.[3]

The proposed Convention fails to reflect a number of matters agreed to at the first discussion.

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[3] See paras. 69 and 70 of the report of the Conference Committee on Maternity Protection (*Provisional Record* No. 20).

The UIA supports the view expressed by the Employers' group that more weight should be given to the Recommendation.

AUSTRALIA

The Government does not provide detailed, item-by-item comment on the proposed instruments, since they do not represent an appropriate framework for new international labour standards dealing with maternity protection. Instead, it provides general comments to assist in refocusing the texts.

The Government supports the adoption of revised international labour standards addressing maternity protection, but the new instruments should be principles-based rather than prescriptive. At this time, the proposed instruments remain prescriptive, to the extent that some countries which are currently parties to Convention No. 103 would not be able to ratify the new Convention, and prospects for increased ratification are somewhat limited.

The new Convention should be confined to broad principles focused on its aims, and be flexible enough to accommodate different national situations and levels of social and economic development. The focus should be on the achievement of actual protections rather than the way in which protections are delivered. The new Convention should specify the relevant principles for maternity protection, leaving the mechanisms for applying them to national law and practice as far as practicable. The new Recommendation should provide guidance on the way the Convention might be implemented, but should not be regarded as the only way. It should promote progress towards higher standards. Promotional provisions should encourage countries to raise their standards as and when appropriate.

The purpose of the new instruments should be not to change the level of protection provided by Convention No. 103, but instead to focus on process and outcomes. Member States with high levels of protection should not attempt to enshrine their own standards in the international standard.

The standards should be rewritten in a less prescriptive mode to facilitate compliance and ratification, particularly by those member States with an adequate level of protection delivered differently than as provided for by Convention No. 103.

There is a need to clarify the relationship between the new standards on maternity protection and existing standards, such as the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Social Security (Minimum Standards) Convention, 1952 (No. 102); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); and the Workers with Family Responsibilities Convention, 1981 (No. 156). Reference should be made in the Preamble to relevant existing ILO standards. The object and purpose of the new instruments, which should be set out in the Preamble, should be to provide protection from discrimination in employment on the grounds of maternity and effective maternity protection, including leave and support for minimum standards of living.

Article 23 of the CEDAW states that "Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained ... in any other international convention, treaty or agreement in force for that State". The provisions of new ILO standards on maternity protection should remain consistent with the CEDAW.

The new standards should focus on the following four principles:

1. *Coverage.* All employed women should be covered by the new instruments, with provision for exemptions according to national law and practice. While universal application is desirable, most countries will not be able to attain this goal in the immediate or even foreseeable future, so the instrument must provide for appropriate exemptions.

2. *Non-discrimination.* Women are entitled to equality before the law and the equal protection of the law in the enjoyment of the right to work. Discrimination on grounds of pregnancy, childbirth and lactation should be prohibited. This principle should be applied in selection for employment, during the course of employment, and in termination of employment.

3. *Leave entitlements.* In order to prevent discrimination against women in employment on the grounds of maternity, pregnant workers should be entitled to take leave during pregnancy (for pregnancy-related reasons) and at the time of and immediately after the birth. Leave should not be tied to or linked to the protection of living standards. Leave should be an entitlement to be accessed at the discretion of the individual employee. The current 12 weeks' standard is an appropriate minimum entitlement. Compelling women to take compulsory leave has been determined to be discriminatory in some countries. National law and practice can protect women workers to ensure that decisions about accessing their leave entitlements are made without duress.

4. *Protection of living standards.* Pregnant workers should be entitled to protection of their living standards. Such protection may be provided by any or a combination of the following: financial remuneration, medical benefits and other non-pecuniary benefits. Where protection is provided by social insurance, the minimum standards established by Convention No. 103 remain appropriate. Countries which provide protection otherwise than through social insurance would be required to report to the ILO on how they delivered protection of living standards.

The attainment of these four principles should be a matter for the ratifying member State to demonstrate in its reports to the ILO on the implementation of the Convention. The ILO supervisory machinery can play an important role in ensuring that outcomes are appropriate within the context of the Convention.

The structure of the instruments should also be reviewed. If the ultimate goal is to protect pregnant women from discrimination, the non-discrimination provisions should immediately follow the provisions dealing with definitions and scope.

Improvement in maternity protection can be achieved by a flexible, principles-based Convention which will facilitate wider ratification, and then be subject to the reporting and supervisory processes. The prescriptive Convention model has already failed in relation to maternity protection. Other principles-based Conventions – for example, the Equal Remuneration Convention, 1951 (No. 100), and Convention No. 111 – are among the most widely ratified Conventions, and neither prescribes the methods for achieving their goals.

AUSTRIA

Federation of Austrian Industry (IV). The fundamental reason for revising Convention No. 103, is the fact that it has been ratified by relatively few countries. However, the proposed texts do not fulfil the need for more flexible instruments acceptable to more member States. The Convention should include only the basic guarantees of maternity leave and protection against termination of employment, leaving other details to the Recommendation.

The stated purpose of Article 4(8) of Convention No. 103 – to ensure that "in no case shall the employer be individually liable for the cost of such benefits due to women employed by him" – is extremely important. A similar provision should be included in the new Convention, in the interest both of employers and of women jobseekers.

Federal Chamber of Labour (BAK). Welcomes the revision of Convention No. 103 to adapt it to new conditions.

AZERBAIJAN

If the changes suggested by the Government are taken into account, the proposed texts will be a satisfactory basis for discussion at the 88th Session of the Conference.

BAHRAIN

The text of the Convention must be flexible to encourage ratification. This can only be achieved if national circumstances and practice are taken into account.

Excessive protection could restrict work opportunities for women, as employers might be less willing to hire them.

BARBADOS

Barbados Employers' Confederation (BEC). Supports the move to draw up a new Convention on maternity protection, but believes that a balance must be sought between the need to guarantee maternity protection for female workers and the need to produce a Convention that is ultimately ratifiable by a wide cross-section of nations. This could be achieved by removing prescriptive detail from the Convention and placing it in the Recommendation.

BELGIUM

As work on this subject currently stands, it will not be possible for the Government to ratify the new Convention without carrying out a relatively extensive revision of national legislation.

BENIN

National Employers' Council of Benin (CNP-BENIN). The new instruments should be far more flexible than the current ones, with a view to promoting ratification. Discussions on maternity protection must aim to achieve a balance between protecting women's health, safeguarding their jobs during and after pregnancy, and protecting their children, on the one hand, and protecting employers' interests, on the other. Excessive costs might be harmful to an enterprise and could adversely affect employment opportunities for women, particularly those of childbearing age. For this reason, it is essential to return to the spirit of Article 4(8) of Convention No. 103, according to which "in no case shall the employer be individually liable for the cost of such benefits due to women employed by him".

BOTSWANA

The proposed texts are a satisfactory basis for discussion at the 88th Session of the Conference.

BRAZIL

Força Sindical (FS). For the last 11 years, maternity leave in Brazil has stood at 120 days (17 weeks) for all female workers. This period of paid leave has not led to any discernible discrimination regarding women's employment nor has it caused any imbalance in the welfare benefits available under social security. However, there is scientific evidence to show the importance of having the mother remain with the child in the post-partum period, thus ensuring breastfeeding and health care for the baby.

BULGARIA

The Government supports the proposed revision of these instruments and considers that the time is right for doing so. The proposed texts constitute a suitable basis for discussions at the 88th Session of the Conference.

CAMEROON

The proposed texts form a satisfactory basis for discussion at the 88th Session of the Conference.

CANADA

Canadian Employers Council (CEC). Report V(1)[4] underscored the key emphasis placed on protecting the health of mothers and infants in the legislation of member States, on the one hand, and, on the other hand, the lack of ratification of Convention No. 103. That Convention should be revised with a view to making it realistic and capable of meeting the needs and aspirations of the majority, and emphasizing principles recognized by all.

Canada is currently undertaking a major reform of parental leave. It intends to extend parental leave from six to 12 months, and to ease the conditions governing the programme and its financing so as to increase the number of beneficiaries. This is a veritable social project that will require the contribution of all citizens, not just employers and employees. Under the circumstances, Canada cannot help but be sensitive to the revision of Convention No. 103. However, a number of amendments, reforms or the addition of new provisions would be needed to bring Canadian legislation into line with the nature and scope of the international standards retained in this regard to date.

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[4] ILO: *Maternity protection at work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)*, Report V(1), International Labour Conference, 87th Session, Geneva, 1999.

The proposed text goes beyond the initial objectives described above. Certain provisions in the proposed Convention exceed minimum protection standards (i.e. Article 9(1) on nursing breaks), while the proposed Recommendation contains minimum protection standards (i.e. Paragraph 7 on health protection).

There is a lack of realism in that the proposed text does not adapt the provisions based on a company's size. In addition, the financial burden likely to result from certain provisions of the proposed Convention could have a negative impact on employment for women (e.g. Article 9). This would defeat the goals for which the Convention was originally intended.

Canadian Labour Congress (CLC). Expresses its commitment to improving minimum standards and its serious concern regarding any movement to water down the texts in the name of greater flexibility. The Convention and Recommendation should be ratified by as many countries as possible. The CLC cannot support revisions which would result in weaker, rather than better, maternity-related rights for women and their children.

CHILE

Compared to Convention No. 103, the proposed Convention provides some flexibility regarding the rights recognized for pregnant women and working mothers – it allows its application to be adapted to the operational requirements of enterprises. The intention is that the rights granted to working mothers should not impose rigidities that will stop enterprises from achieving optimum production.

In principle, this premise does not appear to be a negative one. It is a question of achieving a balance between the objectives of protecting the weaker party to the employment relationship and promoting maximum efficiency in the enterprise. Protective standards would continue to guarantee pregnant women and working mothers a set of rights that preserve their employment stability, but would not stand in the way of production, which is more dynamic and changing than ever.

In practice, however, the flexibility contained in the proposed instrument could imply the loss of rights for pregnant women and working mothers. In some cases, rather than simply adapting or establishing flexible ways of complying with maternity guarantees, there are legal mechanisms that repeal rights. These include the provisions on scope, length of leave and nursing breaks, for example.

The flexibility provisions should aim to adapt the exercise of labour rights to the operational needs of enterprises, without implying either a loss of rights or a reduction in the coverage of the legal protection for any category of worker or sector of economic activity.

The degree of flexibility must not result in a reduction in the level of internationally recognized guarantees for pregnant workers and mothers. Appropriate flexibility in the exercise of such rights should aim to achieve ways of implementing these guarantees that allow enterprises a reasonable margin of adaptability and mobility. The list of grounds that permit the flexible application of labour rights must be exhaustive to ensure that they do not constitute broad and discretionary powers for enterprises unilaterally to apply restrictions on these maternity protection standards. The correct way of achieving appropriate flexibility is through collective autonomy: employers and workers reaching agreement on the margin of flexibility to apply to the exercise of labour rights.

Confederation of Production and Trade (CPC). National regulations governing maternity protection are relatively demanding and sometimes excessive in comparison with international standards. The ratification of this proposed Convention by Chile would definitively consolidate the prevailing situation, making future reforms to promote women's participation in the labour market impossible. The CPC therefore does not agree to the adoption of the proposed Convention or to its ratification by Chile.

COSTA RICA

Following consultations with the main organizations of employers and workers, the Government has no amendments to suggest or observations to make concerning the proposed texts. The Government considers that these texts now form a suitable basis for discussion at the 88th Session of the Conference.

CUBA

Following consultations, the Government considers that the proposed texts constitute a suitable basis for discussion at the 88th Session of the Conference.

It emphasizes that its health care system accords great importance to perinatal care and provides special programmes to provide care for expectant mothers and to assist working women in the care of their children during the first years of life. National legislation concerning working mothers is being adjusted in line with medical and scientific criteria to provide a longer period of employment protection and allow more time for working women to nurse their babies.

CYPRUS

The proposed Convention and Recommendation are a satisfactory basis for discussion by the Conference at its 88th Session.

The Government emphasizes that governments, employers and workers should bear in mind that the ultimate aim should be to reach agreement on the text of a revised Convention capable of receiving the highest number of ratifications, for only in this way will the largest possible number of women be protected.

Obstacles which prevented ratification of the existing Conventions should be removed. At the same time, the text should offer substantial protection, be sufficiently forward-looking and pave the way for additional improvements at the national level according to the socio-economic conditions in each member State.

CZECH REPUBLIC

The Government is in favour of adoption of the proposed instruments, and believes that they will ensure adequate protection of employed women. At the same time, the Convention should impose only obligations which are within the reach of member States.

DENMARK

Danish Employers' Confederation (DA). The first discussion did not come closer to the overall objective of creating more ratifiable instruments and thus of raising global standards on birth and maternity. During the second discussion, this objective should be kept in focus so that a balance is found between the need for protection and the possibilities for implementation. Desire for national improvements or promotion of national issues should be set aside in favour of the objective of raising global standards. The DA intends to vote in favour of a Convention only if it is also able to support Danish ratification. This precondition was not met after the first discussion.

The instruments should be at a level where ratification and enforcement are both possible and realistic in industrialized as well as developing countries.

One means to achieve this is to concentrate on actual maternity protection, rather than moving into areas such as those concerning fathers or more family-related conditions, which may already be covered by other ILO instruments. Furthermore, the extension of the Convention to include adoption is regarded as an obstacle to broad ratification.

The Convention should lay down a number of general principles, while individual objectives should be moved to the Recommendation.

This, together with maintaining the principle of Article 4(8) of Convention No. 103 stating that "in no case shall the employer be individually liable", should be further considered as a means of overcoming the obstacles which were faced during the first discussion.

ECUADOR

Ecuadorian Confederation of United Class Organizations of Workers (CEOCUT). Fully supports the proposed Convention and Recommendation.

ERITREA

Women should not be marginalized in the labour market by too much maternity protection. Many employers are reluctant to hire more women because of the current level of maternity protection under national legislation.

FIJI

The proposed texts are a satisfactory basis for discussion by the Conference at its 88th Session.

FINLAND

The aim should be to adopt a Convention that would be ratified by as many member States as possible. If the revised Convention is ratified by as few Members as the present Convention, it may tend to reduce the value of Conventions generally.

Commission for Local Authority Employers (KT). Convention No. 103 is too detailed and inflexible. The new Convention and Recommendation should protect the health of the employee and the child as well as the employment security of the employee, but not cause the employer to bear any unreasonable burden. Should the employer alone become responsible for the costs of maternity leave, this may lead to a decline in women's position in the labour market.

Confederation of Unions for Academic Professionals in Finland (AKAVA), Central Organization of Finnish Trade Unions (SAK) and Finnish Confederation of Salaried Employees (STTK). Revision of the Convention must aim at realistic enhancement of the protection of mothers and children. "Ratifiability" must not be used as an excuse for watering down the central issues of the Convention.

FRANCE

The objective is not only to draw up instruments on maternity protection at work, but also to create the conditions under which these new instruments, designed to make real improvements in the situation of women during pregnancy and after childbirth, will be ratified by the greatest possible number of countries. The Government therefore does not wish the scope of the Convention to be extended to cover parental leave and paternal rights. Provisions for implementing the proposed Convention should, in any case, be set out in the Recommendation.

The delegates' work should be clearly focused on maternity protection at work and not extended to subjects which might justify specific discussions in their own right, such as parental leave or even paternal rights. The standards of the Convention should also be maintained at a sufficiently general level to allow Members a margin of adaptability in relation to their specific national situations. If these two concerns are not taken sufficiently into account, there would be good reason to fear that the new Convention would be no more than just another reference text, with applicability reduced to a few countries only.

Movement of French Enterprises (MEDEF). The proposed Convention and Recommendation should not go beyond provisions that provide a minimum level of protection for pregnant women, women who have recently given birth or nursing mothers. One should beware of aligning the Convention at an optimal level of protection provided by a given national legislation taken as a reference.

Although there is a certain consensus on a minimum level of maternity protection, there is clearly a very wide range of approaches to family leave in the different member States, based on religious, political, social and economic differences. Therefore, in order to promote instruments which can be ratified by as many Members as possible, attention should be refocused on the mandate of the Committee, that is, "maternity protection at work".

The proposed Convention which was discussed in June 1999 appears to be very rigidly moulded on Convention No. 103, partly as a result of pressure from workers' representatives who regard it as an irreducible standard of acquired benefits. The new instrument could thus lead to the same difficulties as Convention No. 103 and consequently also fail to be ratified by the majority of Members.

The Committee discussions concerning the legal scope of the Recommendation cannot hide the fact that a Member ratifying the Convention commits itself to endeavouring to attain the objectives set out in the Recommendation. The two instruments are linked. The Recommendation should therefore not include objectives that are unattainable for most countries.

French Democratic Confederation of Labour (CFDT). Does not want measures that are too restrictive and exclude women of childbearing age from the labour market, but rather a Convention ratified by the greatest possible number of countries which will help to achieve real social progress. Now is not the time to steer discussions towards getting the Conference to adopt a new Convention on rights concerning pregnancy, birth and early childhood. This proposal, which has support in particular among the European States, could put off some member States which are otherwise willing to promote maternity protection rights in their countries.

Given that the aim is to have the revised Convention ratified by more countries, the CFDT has three main concerns: protection of the health of mother and child; ensuring a reasonable level of income sufficient to maintain mother and child; and providing protection against dismissal.

GERMANY

In principle, the proposed Convention is ratifiable by Germany. In view of the desired ratification by as many States as possible and lower standards which may exist in developing countries, often only a very general revision of rights and protective measures is possible.

Confederation of German Employers' Associations (BDA). The proposed texts currently under consideration are too detailed, in part unbalanced, and overall do not constitute any real progress over existing instruments. If adopted, they would have no chance of being implemented worldwide. In particular, the Convention would have little prospect of widespread ratification. The proposed standards should therefore be thoroughly revised. The Convention should confine itself to establishing the essential principles of maternity protection. The appropriate place for specific aspects of maternity protection is the Recommendation. More balance is needed in both the Convention and the Recommendation. The legitimate interest in maternity protection should not be regarded in isolation, but must be balanced, clearly and comprehensibly, against the needs and circumstances of enterprises, especially small and medium-sized firms. If the interests of firms are neglected, ultimately this has a negative impact on the employment prospects of women.

German Union of Salaried Employees (DAG). Welcomes the proposed Convention, which lays down minimum standards for the protection of pregnant women and their children. It is very important to strengthen the clause on employment protection and non-discrimination and reintroduce the provisions on nursing breaks.

GHANA

Ghana Employers' Association (GEA). Supports a new flexible Convention. Inflexibility will only thwart affirmative action towards equality of rights and opportunities for women, especially in developing countries. Women may not be employed owing to the responsibilities that employers would have to shoulder.

GRENADA

The Government is satisfied with the proposed text to be discussed at the Conference and, as a consequence, proposes no amendments.

GUATEMALA

Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF). The texts reflect fairly accurately the debate that took place in the first discussion and therefore are a sound basis for the second discussion. However, they could be improved with regard to the financing of benefits and the question of adoptive children.

HUNGARY

The tripartite National ILO Council, at its meeting of 2 December 1999, unanimously supported the texts as they stand.

ICELAND

The proposed texts are a satisfactory basis for discussion by the Conference.

INDIA

The Government would prefer that the proposed Convention be flexible so as to facilitate its implementation in a phased manner in different sectors of the economy. Even if this suggestion is not implemented, it would nevertheless support the adoption of a Convention supplemented by a Recommendation to demonstrate its commitment to the cause. However, such support would not guarantee that it would be able to ratify the Convention in the near future. In general, the Government agrees with the texts of the proposed Convention and Recommendation.

INDONESIA

The Government agrees with the concept in the report, which addresses issues in line with its national legislation.

IRAQ

The proposed Convention and Recommendation are deemed valid as a basis for discussion at the 88th Session of the Conference.

ITALY

Italian General Confederation of Labour (CGIL), Italian Confederation of Workers' Unions (CISL) and Italian Labour Union (UIL). It is outdated to consider maternity anywhere in the world as a burden on society or as a production cost for companies. It is necessary as a matter of principle to ensure for an increasing number of women the right to maternity protection, care and respect. The instrument should guarantee universal minimum standards, but should not interfere with the cultural, religious and economic interests inherent in each country or superimpose external ideas upon them.

Because inalienable rights are involved, namely, the safeguarding of women's and children's health and the protection of women's right to work, a revision of the Convention in a negative sense would have met with strong resistance in countries, like our own, where Convention No. 103 has already been applied.

Since more and more women are involved in production processes, motherhood is in trouble. An economic bias in the current view of society is running counter to its renewal through human reproduction. Countries' economic interests deal in profit and loss and as long as maternity is regarded as a cost, it will be hampered on every side.

The text to be produced at the 88th Session must not be a watered-down version of Convention No. 103, but rather a Convention which, while providing minimum protection standards, guarantees the mother's safety before, during and after pregnancy, and guarantees the safety of the child.

JAPAN

It is important that the Convention allow ratification by as many nations as possible in order to provide the necessary maternity protection. The new instruments should be realistic and flexible in order to respond to the diverse national legislation of member States. Overly detailed provisions that narrow the feasibility of ratification should be avoided. Furthermore, the Convention should only include provisions essential to achieve the basic objectives of maternity protection.

Japanese Trade Union Confederation (JTUC-RENGO). It is necessary to revise Convention No. 103 and Recommendation No. 95 to reflect developments in the world, higher living standards, the significant increase in women's workforce participation and the improvement in gender equality. In the revised Convention, it is important to secure the legal guarantee of a minimum of six weeks' compulsory leave, to strengthen maternity protection at the workplace, to abolish discrimination based on maternity, to secure the right to nursing breaks, and to protect the income of women on maternity leave.

JORDAN

Federation of Jordanian Chambers of Commerce (FJCC). The proposed texts form a suitable basis for examination and discussion at the 88th Session of the Conference.

General Federation of Jordanian Trade Unions (GFJTU). The proposed texts do not require amendment.

REPUBLIC OF KOREA

The provisions should be more flexible so that a larger number of Members, trying to realize the ideals of the Convention despite the limitations of their circumstances, will ratify the Convention, and interest in and technical discussions of maternity protection can be further stimulated.

KUWAIT

The Government supports the revision of Convention No. 103 and Recommendation No. 95 to keep pace with international economic and social developments, as well as changes in national law and practice of member States, especially as maternity protection is the joint responsibility of governments and employers. The proposed Convention is an adequate basis for discussion at the Conference.

Greater protection in the form of longer maternity leave and the introduction of a policy regarding adoption and special leave for parents to care for adopted children will cause employers to hesitate before accepting women in the labour market owing to the additional financial and operational burdens they will have to assume as a result of the implementation of the Convention. A balance must therefore be sought between the interests of the working woman and providing adequate protection for her during pregnancy, confinement and maternity, on the one hand, and the interests of the employer, on the other.

The new Convention must be limited to general principles and couched in flexible phrases to adapt it to national circumstances and levels of development in different parts of the world.

The proposed Convention seeks to provide working women with greater privileges without taking due account of the consequences. This encourages those women without the desire or social or economic motivation to work to seek employment as long as they can enjoy all the facilities and benefits without effort.

Certain Articles, such as Articles 3, 5 and 9, are somewhat exaggerated.

The proposed Convention has compensated for some of the shortcomings of Convention No. 103.

LATVIA

The provisions of the proposed Convention are already incorporated in existing legislation of the Republic of Latvia.

LITHUANIA

After consultation with concerned institutions, the Government supports the texts of the proposed Convention and Recommendation and does not provide any comments.

MALAYSIA

Malaysian Trades Union Congress (MTUC). The proposed instrument on maternity protection is good and provides a point of reference for all future plans and initiatives aimed at assisting and protecting working women in Malaysia. Nevertheless, there are a number of issues that need to be addressed in the light of the prevailing circumstances in Malaysia, more so with the advent of job contracting, part-time work and home work. There are instances where maternity protection is still lacking in some Malaysian companies, and enforcement ineffective. This could be attributed to insufficient awareness or indifference among employers as regards the health and welfare needs of working women.

There seems to be an increasing tendency to link maternity benefits with national population policies. This has resulted in disparities in maternity benefits between countries having differing population policies. Women giving birth to a fourth or fifth child are sometimes disqualified or excluded from receiving maternity benefits. Such women are forced to bear the burden of national population policies.

MAURITIUS

The proposed texts are a satisfactory basis for discussion at the 88th Session of the Conference.

Federation of Public Service Trade Unions (FSCC). Agrees to the text of the proposed Recommendation.

MOROCCO

The Government considers that the proposed texts overall are a satisfactory basis for discussion at the 88th Session of the Conference. However, the instruments should be sufficiently flexible to allow wide support from member States.

Moroccan Labour Union (UMT). Morocco must support strong protection for its working women, who are the foundation of its economy and wealth.

If Members begin supporting flexibility in Conventions, with the doubts that arise as to their application, what about the other Conventions, such as the Worst Forms of Child Labour Convention, 1999 (No. 182): will it be necessary to make concessions there too? It is more appropriate to strengthen the ILO's executive arm rather than to weaken Conventions.

That it was deemed necessary to update Convention No. 103 to take account of social and economic changes that have occurred in the world does not mean making concessions or going back on what has already been achieved or is still to be achieved. A larger number of ratifications should not be sought at the expense of workers, and working women in particular, and their rights.

Maternity concerns not only women and their rights, or an event that is limited in time and space, but also a whole society and world. The foetuses and newborn babies whose mothers are meant to enjoy favourable conditions are tomorrow's men and women and represent our future.

NETHERLANDS

The Government considers it vitally important that a revised Convention on maternity protection be finalized during the forthcoming session of the Conference. However, given the substantial differences that exist between the views held by employers, workers and various groups of States, there is a real risk that this will fail through a lack of consensus among the parties involved. This would be a highly undesirable Conference outcome.

The Government therefore requests the Office to consider the question of how best to promote agreement on a new Convention and to put forward proposals to this end. As part of this strategy, it is important that Conference delegates are clear from the outset about the future status of Convention No. 103. The subject of final clauses should therefore be dealt with at the beginning of the Conference. Agreement on the content of the new Convention will be easier to achieve if it is clear right from the start that Convention No. 103 will also remain open for further ratification in the future. The need to aim for the same level of protection in the new Convention will then be less strongly felt. A second way to encourage agreement on the text of the revised Convention is to give States the option of ratifying the Convention in part (a minimum of six Articles, for example, which should include in any event the most important obligations) or through a possibility of limiting the material scope of the Convention.

Confederation of Netherlands Industry and Employers (VNO-NCW). The main objective of the revision of Convention No. 103 is to guarantee a minimum standard of maternity protection and to make the Convention ratifiable for more Members. This requires an instrument that gives more flexibility to Members in order to meet the minimum standards. The results of the discussion in June 1999 do not encourage optimism about the revision: more flexibility should be introduced in order to emerge with an instrument that can be ratified by the majority of Members.

Maternity protection should not result in employment opportunities of women being unnecessarily damaged. This is another argument to leave more space for Members to comply with the new instrument.

Netherlands Confederation of Trade Unions (FNV). The possibility of a two-part Convention open to partial ratification could create the risk that the discussion in 2000 will concentrate on the issue of which Articles should be in the core part of the Convention and which could be removed to the second, optional part. It would not be wise to opt for four ILO standards on maternity protection (Convention No. 3, Convention No. 103, new Convention, Part I, and new Convention, Part II). The final comments of the Netherlands Government with regard to the optional part of the Convention with regard to parental leave seem to confirm these doubts.

New Zealand

New Zealand Employers' Federation (NZEF). The revised Convention should contain as little prescriptive detail as possible so that it can accommodate the diversity of social and economic conditions of member States. It is most important that the Convention concern itself with principles, not prescription, leaving member States with sufficient flexibility to implement the Convention in the way best suited to national circumstances. A balance is needed between providing for a woman's safety, health, and job security during pregnancy and guaranteeing a minimum period of leave after childbirth (should the woman wish to take the leave), on the one hand, and protecting the employer from additional monetary and operational costs, on the other. Only a minority of countries have ratified the existing Convention. The revised Convention should not repeat the same prescriptive mistakes. If implemented in its present form, the Convention would only mean reduced employment opportunities for women of childbearing age, which is not the intended outcome.

While relevant New Zealand legislation covers both parental leave and adoption, the Convention itself should not go beyond the protection from discrimination of pregnant women and those of childbearing age. To avoid confusion and to encourage ratification, the Convention should relate solely to pregnancy and maternity leave. Its ambit should not in any way be expanded beyond those concerns. Were this to happen, it is unlikely that even a reasonable number of member States would be able to ratify the Convention, certainly not a majority.

However, where national law *does* make more extensive provision than that required by the Convention, there should be deemed to be compliance with the Convention, even though certain aspects of national law might be at variance with some detailed provisions.

New Zealand Council of Trade Unions (NZCTU). Supports protection of workers' rights to maternity and parental leave through a revised Convention. The Office has made significant progress in developing a positive and workable proposed text.

Norway

The present Convention No. 103 has been ratified by only a few countries. It is of vital importance that the Convention concentrate on fundamental rights, and not give detailed provisions as regards each country's rules and practice, so that mothers all over the world can benefit from these rights.

Confederation of Norwegian Business and Industry (NHO). The main purpose of revising Convention No. 103 and Recommendation No. 95 should be to obtain a flexible Convention giving justifiable minimum rights and guidelines for maternity protection and what should be contained therein. The instrument should not lay down excessively rigid and detailed rules and regulations without possibilities for adapting them to the actual situation of member States and to national law and practice in this field. Very few member States have ratified Convention No. 103. Better maternity protection for as many women as possible through a revised instrument should focus on minimum rights.

The objective – to create a Convention which can be ratified by a majority of member States – will only be met if a reasonable balance is established between protection of the economic security of women and children, health and job security during pregnancy and birth, and the extra economic and administrative costs forced upon employers through the Convention. There is reason to fear that an overly expansive and rigid Convention without the abovementioned balance would negatively affect young women's possibilities on the labour market in countries where the Convention might be ratified.

The proposed Convention and Recommendation are not substantially different from the Convention in force when it comes to detailed regulations and lack of flexibility. In certain areas, significant extensions of rights are proposed (e.g. Article 9). There is little reason to believe that the proposed Convention would attain a higher number of ratifications than Convention No. 103.

PAKISTAN

The proposed texts are not appropriate for the economic conditions prevailing in developing countries like Pakistan.

Employers' Federation of Pakistan (EFP). The proposed instruments are not commensurate with the objective conditions prevailing in developing countries like Pakistan. In view of the weak state of economies, rampant unemployment and population explosion, as well as the non-existence of viable, comprehensive and nationwide social security systems, adoption of such a Convention may prove to be counter-productive because it might discourage employment of women as too expensive and cumbersome.

Pakistan National Federation of Trade Unions (PNFTU). The proposed Convention and Recommendation seem to be quite satisfactory.

PHILIPPINES

The proposed alternative "gender-neutral" title which refers to the "rights concerning pregnancy, birth and early childhood" may have to be considered as it best captures the scope of the revisions.

PORTUGAL

The proposed texts are in line with the conclusions adopted by the Conference after the first discussion and form a sufficient basis for a second discussion.

The existing instruments are being revised to facilitate future ratification so as to extend the protection they offer as far as possible.

In these circumstances, the Government agrees that the revised Convention should apply only to mothers. Some rights for fathers could be provided with regard to paternity leave in the Recommendation or in the Convention under Part II, ratification of which would be optional. Convention No. 156 already establishes some rights for fathers.

Confederation of Portuguese Industry (CIP). A large number of Members have not ratified Convention No. 103, and great flexibility and a large dose of realism are called for when addressing the content of standards or provisions to be adopted. The texts proposed are too rigid, prescriptive and restrictive and therefore do not meet with the CIP's approval.

In the light of the foregoing, the proposed Convention and Recommendation are not an appropriate basis for discussion at the 88th Session of the Conference.

General Confederation of Portuguese Workers (CGTP-IN). Considers the texts a good basis for discussion at the 88th Session of the Conference.

ROMANIA

The proposed texts are a satisfactory basis for discussion at the 88th Session of the Conference.

SAUDI ARABIA

The Government has no changes or comments to present, and considers the proposed texts to be an appropriate basis for discussion.

SINGAPORE

The Government recognizes the significant economic role played by female workers in the workforce. This is especially so given Singapore's small population base, which has given rise to a scarcity of human resources. As childcare responsibilities constitute a major reason deterring women from rejoining the workforce, a major policy consideration in encouraging women to return to the workforce, and ensuring that they are not disadvantaged compared to their male counterparts owing to their childcare responsibilities, is the provision of adequate maternity protection and support for childcare.

While it supports the principle and objective of the proposed Convention and Recommendation to provide maternity protection and other benefits, the Government is of the view that flexibility should be accorded to member States to allow them to decide on the appropriate duration of paid maternity leave in their legislation, as well as on the system (either compulsory social security insurance or other schemes) which they consider to be most appropriate in the granting of such benefits.

SLOVAKIA

The proposed Convention and Recommendation are a satisfactory basis for discussion at the 88th Session of the Conference.

SLOVENIA

The Government does not propose any amendments or comments and considers that the proposed texts are a satisfactory basis for discussion by the Conference at its 88th Session.

The standards in national legislation are the same or even higher than those in the proposed texts and will be improved under new legislation that is being prepared. The Government will participate in striving for the highest standards that can be achieved by consensus at the Conference.

SOUTH AFRICA

The report raises important questions on the status of parents of adoptive children, nursing breaks and the relationship with family responsibility issues. Improved and strengthened protection should be provided to working mothers without neglecting the dynamic nature of families in the present context.

Business South Africa (BSA). The proposed texts are aimed not at general principles and the setting of universal minimum standards, but rather at establishing a rigid best-practice scenario in all countries, irrespective of their differences. This "best-practice" approach will simply perpetuate the trend of negligible ratification which makes a mockery of the time and effort devoted to the developing and adopting of international labour standards. The rigid and costly approach of the proposed texts is counter-productive to efforts in countries like South Africa to address high levels of unemployment by encouraging job creation, inter alia, through small businesses, because it translates into additional employment costs.

BSA supports an international labour standard aimed at creating a balance between protecting a woman's health and safety and her job security during pregnancy and for a limited period after the birth of her child, on the one hand, and protecting the employer from additional monetary, compliance and operational costs, on the other. The burden on co-employees, who have to stand in for women receiving maternity protection, should be brought into the equation. This is particularly the case where the proposed text goes beyond realistic minimum standards that could be implemented. The purpose of the proposed Convention is to protect the health, safety and job security of the expectant mother during and directly after her confinement, and its scope should not be broadened beyond this position.

SPAIN

Trade Union Confederation of Workers' Committees (CCOO). A second, optional part should be added to the proposed Convention containing provisions on parental leave entitlements, in addition to maternity leave.

General Union of Workers (UGT). It is important to draw a distinction between, on the one hand, the need to protect the health of working mothers and the employment rights arising in connection with their unique biological circumstances, which call for protection measures intended specifically for women, and, on the other hand, the matter of subsequent childcare. The latter does not call for specific provisions concerning the rights of women as a particular group, since family responsibilities concern men as much as women.

Legislation should not perpetuate the assignment of discriminatory social roles based on sexist patterns of the division of labour that might exist in member States.

Minimum international standards in this area can be approached from two different angles: (1) they can protect women workers and their children in respect of health and employment rights only, leaving it to other standards to address the matter of childcare; or (2) they can deal comprehensively with both aspects. The UGT's comments on the proposed Convention should be considered in the light of this assumption.

SRI LANKA

The proposed Convention and Recommendation are a satisfactory basis for discussion by the Conference at its 88th Session.

SURINAME

The Government has no amendments or comments. The proposed texts are a satisfactory basis for discussion by the Conference.

SWEDEN

The proposed texts are closely in agreement with the conclusions adopted by the Conference at its 87th Session and thus constitute a satisfactory basis for discussion.

In view of the interest shown in several quarters during the first discussion in its proposal for a second, optional part of the Convention containing provisions on parental leave, the Government finds cause to again defend and explain its proposal. Worldwide, there is a clear tendency for women's employment participation to increase and to be sustained during the years of early motherhood. Many families today depend on two incomes for their livelihood. Families need support in order to be able to combine economic activity with family life. Support of this kind should be designed to accommodate the desire of parents of young children to be economically active.

A second, optional part of the Convention should proceed from a purely maternity-related to a parental benefit. This would make the Convention a modern, forward-looking instrument reflecting current developments.

The primary aim of a parental benefit is consideration of the child's best interests. Gender equality is a further aim. Enabling both parents to take leave when their children are small would affirm that fathers too have a duty of participation in the supervision and care of children.

Contrary to what was maintained during the first discussion Convention No. 156 does not contain any provisions on parental leave, and therefore an Article on parental leave in the new Convention would not duplicate provisions of other Conventions. Statutory provisions on parental leave already exist in at least 36 countries.

Structurally, the Convention would consist of two operative parts which countries would ratify according to possibility and development. A second, optional part should be introduced, containing an Article substantially corresponding to Paragraph 10 of the proposed Recommendation. The Government wishes to emphasize that a voluntary second part of the Convention on parental leave cannot constitute an impediment to ratification by any member State. It proposes that Article 11 be renumbered 13 and that new Articles 11 and 12 should be added to the Convention as follows:

New Article 11

1. The employed mother or employed father of the child shall be entitled to parental leave during a period following the expiry of maternity leave.

2. The period during which parental leave might be granted, the length of the leave and other modalities, including the payment of parental benefits, the use and distribution of parental leave between the parents, shall be determined by national laws or regulations or in any manner consistent with national practice.

New Article 12

1. Any Member which ratifies this Convention may, by a declaration appended to its ratification, exclude Article 11 from its acceptance of the Convention.

2. Any Member which has made such a declaration may at any time cancel that declaration by a subsequent declaration.

Swedish Employers' Confederation (SAF). A less comprehensive instrument ratified by the majority of member States is to be preferred to an instrument which is so detailed that many countries will once again have difficulty ratifying it. The purpose of the revision should be a Convention characterized by flexibility and divested of the existing detailed stipulations regarding implementation. While the Convention does not present any problems for Sweden, it is feared that new drafts will result in an excessive degree of detail and yet another Convention that will be ratified by only a few member States.

Very great efforts will be required of all three parties in order for the second discussion to result in a document which a majority of member States will be in a position to ratify. Attempting yet again, in such a situation, to introduce a second part which has already been defeated once at the first discussion is futile, and the SAF therefore does not share the Government's view that it should again try to secure the inclusion of a section on parental leave in the Convention.

SWITZERLAND

The Federal Maternity Insurance Act adopted by the Swiss Parliament in 1998 was rejected in a referendum in 1999. Switzerland is again in the situation which existed before the adoption of the Act, i.e. without any provision for genuine paid maternity leave, which has thus far prevented ratification of Convention No. 103.

After the negative vote, a number of parliamentary proposals were brought before the Federal Assembly to solve the problems created by the popular rejection of the Act. The Federal Council is currently considering the different options for solving the problem of maternity insurance and intends to submit a proposal to Parliament which should resolve this issue. The fact remains nevertheless that Switzerland is unable for the time being to ratify any international instrument on maternity protection.

Confederation of Swiss Employers (UPS). It is unreasonable to have a rigid instrument with standards of protection fixed too high in this area. Such an instrument will have even less likelihood of being ratified than Convention No. 103. The aim of revising this Convention was to create a flexible instrument which would be ratifiable by as many countries as possible.

The UPS is not in favour of having an international instrument in this area, particularly one which aims to extend benefits. Maternity protection, and in particular the question of paid maternity leave, must be governed by collective agreements. Solutions reached directly between the social partners are distinctly preferable to any form of legal requirement. Protection must not be imposed by the Government in a uniform manner; the Government should confine itself to filling any possible gaps. If an instrument must be established, a Recommendation would be preferable. The proposed Convention is too detailed and lacks flexibility. It should instead establish general principles that the member States could then adapt on the basis of their economic and social characteristics.

The provisions of the proposed Convention should preferably be contained in the Recommendation, which could be more effective in practice.

The catalogue of protective requirements submitted in the proposed Recommendation is totally unrealistic at the international level.

The objective of the revision of Convention No. 103 has not been achieved. The proposed instruments will not, in their present form, gain wide acceptance at the international level. Only a very streamlined Convention limited to general principles would be likely to achieve wide ratification.

Swiss Federation of Trade Unions (USS/SGB). Although maternity insurance was rejected by a majority of the Swiss population in June 1999, the Swiss delegation should actively support maternity protection at the next discussion at the 88th Session of the Conference. The new Federal Constitution contains a requirement to establish a maternity insurance system. There are also a number of current parliamentary initiatives concerning maternity protection. This means that maternity protection issues in general, and maternity insurance in particular, will remain current in the near future. For this reason, Switzerland must work for a progressive Convention and help to ensure that the revision process results in an improved Convention.

Federation of Swiss Salaried Employees' Associations (FSE/VSA). Protection of pregnant women and mothers at work is a vital part of employee protection in general. There are still countries – including Switzerland – in which it is impossible to provide adequate means of fulfilling this very important obligation of State and society. Producing an international Convention which will establish a minimum standard of protection, while allowing States a certain freedom with regard to the details, is therefore an important task for the ILO.

SYRIAN ARAB REPUBLIC

The provisions of the proposed Convention and Recommendation are progressive in extending legal protection granted to a working woman. The proposed Convention can be ratified after national legislation in force on the subject has been amended.

THAILAND

The Government agrees with the proposed texts.

Employers' Confederation of Thailand (ECOT). Mostly agrees with the contents of the proposed instruments.

Employers' Confederation of Thai Trade and Industry (ECONTHAI). Almost all the provisions of the proposed Convention are already contained in the present national legislation. Where no clear provisions exist, the matter is determined by the competent authority or by national law or practice. ECONTHAI supports the proposed Convention.

TOGO

The Government has no particular observations to make regarding either the form or the content of the proposed Convention and Recommendation.

TURKEY

The Government supports the revision of the Convention and Recommendation in the light of women's increasing participation in the labour market. It suggests no amendments and confirms that the proposed texts are a satisfactory basis for discussion by the Conference at its 88th Session.

Turkish Confederation of Employers' Associations (TİSK). The first discussion had the objective of revising the existing Convention and Recommendation to make them more flexible, because their provisions presented rigidities and constraints which prevented their ratification. In this manner, employment opportunities for women of child-bearing age would be further promoted.

In their current state, the proposed texts contain provisions which would present new rigidities and constraints, and would have an adverse effect on employment opportunities for women of childbearing age.

UNITED ARAB EMIRATES

The proposed texts are a satisfactory basis for discussion by the Conference at its 88th Session.

UNITED KINGDOM

The Government has considered the proposed texts against the background that any new standards should strike a balance to provide minimum standards affording genuine protection for the health and safety of the woman and her child without placing an unnecessary burden upon the employer. The new standards must be focused and complement other related instruments. The proposed Convention and Recommendation generally provide a suitable basis for discussion at the 88th Session of the Conference.

Confederation of British Industry (CBI). Supports fully updating this Convention. The issue of health and safety of pregnant women is extremely important and the ILO has a real opportunity to provide a framework for improving global minimum standards significantly. But the CBI is deeply disappointed by the proposed text as it stands. It would be extremely regrettable if ill-focused and overambitious debate regarding the detail of this Convention resulted in a new but ineffectual standard.

To be effective, ILO Conventions must be focused tightly on core labour standards and need to permit flexibility in the way countries achieve them. They must also be ratified widely. Convention No 103 failed to meet these criteria.

Unfortunately, the proposed revisions of Convention No. 103 diminish rather than enhance the likelihood of widespread ratification. In many countries, debate has moved on from the protection of pregnant women to such matters as family-friendly work practices and work/life balance. These are legitimate concerns for national policy, but they distract from the main focus of the proposed Convention and its likely impact. Consideration of this Convention has been adversely affected by attempts to include some of these issues.

Wider ratification is only likely to be achieved if the proposed Convention is less prescriptive and more realistic. It currently seeks to address issues of best practice and include details which are not suitable for a minimum standards instrument; these would be more appropriately assigned to a Recommendation.

However, greater detail in the proposed Convention is required in respect of responsibility for payment of maternity benefits to women. The employment prospects of women of childbearing age will be seriously damaged if there is no provision to the effect that an employer should not be individually responsible for the direct cost of any monetary maternity benefit to women unless the employer specifically agrees to this beforehand. The proposed Convention should be amended accordingly.

The proposed revisions of Convention No. 103 make it highly unlikely to be widely ratifiable. Both proposed instruments require very substantial changes if they are to be useful instruments for raising minimum standards of maternity protection.

UNITED STATES

The proposed Convention and Recommendation are, on the whole, a satisfactory and challenging basis for discussion by the Conference at its 88th Session. The Government offers comments and suggested amendments to further the Conference's mission to draft a revised Convention that will permit broader ratification, while affording greater employment protection to working mothers.

The ILO must craft an instrument that strengthens the employment rights of working mothers while recognizing diversity among Members. The objective should be to produce an instrument that allows for a greater number of ratifications, in order to extend the Convention's protections to as many women as possible.

Statements by several governments indicate that the sparse number of ratifications of Convention No. 103 was likely due, in part, to the overly prescriptive terms of the Convention. As an example of this, there is a considerable degree of variety in States' maternity leave provisions in terms of the total length of leave, of the distribution of the leave before and after childbirth, and of whether such leave is voluntary or compulsory. The proposed Convention contains a number of complex and highly detailed provisions concerning maternity leave and maternity benefits, which could pose needless obstacles to ratification. References to compulsory leave in the proposed Convention unnecessarily threaten widespread ratification. This is inconsistent with the goal of revising the 1952 Convention to make it more ratifiable.

Ideally, the Convention should be less complex and detailed so as to allow a variety of approaches by individual Members to ensure that core protections are available.

Since the Recommendation serves to clarify and explain the intent of the Convention's language and purpose, the Government supports the proposed Recommendation. However, should the Conference adopt a gender-neutral title for this Convention, the Government would support changes to the proposed Recommendation that would reflect the rights of working fathers, as well as adoptive parents.

US Council for International Business (USCIB). Revision of Convention No. 103 and Recommendation No. 95 is on the Conference agenda because the existing Convention has proven to be too difficult to ratify. Ironically, instead of seeking to develop a high-impact framework Convention that would be susceptible to ratification, the proposed instruments set a standard that is so high that even fewer governments will be able to ratify the proposed Convention. In addition, the proposed Convention is fundamentally flawed in that it seeks to make all the decisions for the woman rather than giving her a right to choose various options based on her personal circumstances. Further, the proposed instruments lack balance between providing protection for the woman and the financial impact on employers, with the resulting adverse consequences on job creation and a rising standard of living for all concerned.

As presently drafted, the proposed Recommendation does not reinforce the proposed Convention in terms of implementation. Instead its guidance is directed at extending the latter's provisions to unrealistic levels. The purpose of the Recommendation should not be aspiration but to provide concrete advice consistent with the terms of the Convention.

URUGUAY

Inter-Trade Union Assembly – Workers' National Convention (PIT-CNT). The proposed text does not significantly improve Convention No. 103. Some of the changes introduced not only neutralize its favourable elements, but actually imply either an immediate or a medium-term deterioration in the conditions regulating the protection of working mothers.

VENEZUELA

The Government has no objection to the proposed text, which takes account of observations submitted in reply to the questionnaire in Report V(1) and the first discussion at the 87th Session of the Conference.

Venezuelan Workers' Confederation (CTV). The good work done by the Conference in June 1999 should be recognized. The CTV hopes that Venezuela will ratify the Convention and give effect to its provisions in law in due course, and that its principles will be respected for the sake of all Venezuelan working mothers with small children in need of care and love.

ZAMBIA

The Government is satisfied with the proposed instruments for discussion at the 88th Session of the Conference.

OFFICE COMMENTARY

The general observations highlight a number of issues that are critical in determining the scope and content of the proposed instruments. Firstly, and perhaps most importantly, it is clear that there is a certain level of consensus on the importance of ensuring a basic minimum level of maternity protection. However, there is a considerable divergence of views concerning the best approach for ensuring that women's needs for maternity protection are met. There is a gap between, on the one hand, those who consider that the maximum number of ratifications is the best means of providing this protection and, on the other hand, those who feel that the maximum content of the instrument will provide the best protection. The first group argues that a new Convention should be restricted to setting down basic universal principles, expressed in a general way that allows member States considerable flexibility in the manner in which they achieve the core elements of maternity protection based on these principles, while the details of implementation could be set down in the Recommendation. In support of their argument, they point to the relatively small number of ratifications of Conventions Nos. 3 and 103 and infer that these Conventions have therefore been largely ineffective. The second group, on the other hand, considers that the texts should not be watered down on the basis of the need to ensure the maximum number of ratifications: ratifications should not be sought at the expense of women workers and their rights.

Some other replies, particularly from governments, sought common ground in aiming for a combination of these two extremes: a text, as one government explained, which should remove the obstacles preventing ratification of the existing Conventions, and at the same time offer substantial protection, be sufficiently forward-looking and pave the way for additional improvements at the national level according to the socio-economic conditions in each member State. However, the diversity of replies indicates clearly that it will not be a simple matter to develop such a text.

Amongst the responses that referred to the need for a flexible, easily ratified Convention, there was no agreement as to whether the current text provides a suitable basis for achieving this objective. Many argued that it is not a suitable basis, but some drew attention to only one or two issues of detail and considered that, overall, the current drafts were satisfactory. Amongst the replies that emphasized strengthening the content of maternity protection, there was general agreement that the current text was broadly satisfactory. A large number of government replies expressed satisfaction with the texts as a suitable basis for discussion, without commenting on the nature of the instrument that they would prefer.

It is now nearly 50 years since the most recent standards were adopted on maternity protection, and over 80 years since the adoption of the first standards. Many replies drew attention to the need to reflect more recent developments in the world, including higher standards of living and higher female labour force participation. They also pointed to the disparities between countries and proposed that a new Convention should be suited to countries at different levels of development and with different social and cultural environments. One reply insisted that maternity benefits should not be linked to national population policies.

Opinions were divided as to whether the new instruments should be concerned solely with maternity protection or whether they should deal more broadly with parental rights and responsibilities. In relation to developments in this area, several replies referred to changes in approaches to family responsibilities and to improvements in gender equality. Some argued that the new Convention offered an opportunity to tackle discriminatory social roles relating to child care and to adopt a forward-looking approach to work and family dynamics. In this context, a few replies supported the proposal, which had not been retained during the first discussion, for a two-part Convention, with an optional second part relating to parental leave. They pointed out, in support of their proposal, that the Workers with Family Responsibilities Convention, 1981 (No. 156), does not contain provisions for parental leave.[5]

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[5] However, such provisions are contained in the Workers with Family Responsibilities Recommendation, 1981 (No. 165).

Many replies, on the other hand, urged that the Convention be restricted to certain "core" issues of maternity protection and not cover issues such as paternal leave, parental leave, family-friendly work practices or adoption.

Surprisingly, perhaps, there were still some differences as to what constitutes the core elements of maternity protection. In one reply, these were described as non-discrimination, leave and protection of living standards, while another referred to protection of the health of mother and child, ensuring reasonable income and protection against dismissal. Many replies argued that protection of the health and safety of mother and child should be a primary concern and should be dealt with in the Convention. A few replies stressed the importance of more time for mothers to nurse their babies, but others considered that making provision for nursing breaks in the Convention was going too far.

Many employers' organizations and some governments emphasized the need to find a balance between standards of maternity protection and the costs of such protection, especially to employers. They warned that unduly high standards of protection could reduce employment opportunities for women of childbearing age and, more generally, adversely affect job creation. They also expressed concern that some provisions could be difficult and costly to implement, especially for small and medium-sized enterprises. They added that if employers could be held directly liable for the costs of maternity benefits, this would further exacerbate a negative impact on job opportunities for women. On the other hand, one reply pointed out that higher standards of maternity protection, such as longer leave, had not in fact inhibited employment growth or resulted in discrimination against women in access to employment. Another reply argued that maternity should not be viewed as a cost, either to society or to enterprises, since it concerned inalienable rights and the future of societies.

Consistent with the concern to reach agreement on a Convention that could be widely ratified, several suggestions were made concerning the provisions that could present avoidable obstacles to ratification. Once again, while certain issues were raised by several respondents, it did not seem that a broad majority could be found on provisions for deletion or amendment with a view to wider ratification. Some of the specific issues mentioned in this respect concerned the question whether any portions of maternity leave should be compulsory; the provision for extension of the prenatal portion of leave; the level of benefits; and the placement on the employer of the burden of proof in cases of dismissal. More generally, as noted above, the level of detail in provisions, especially in relation to maternity leave and benefits, was cited as a potential obstacle to widespread ratification.

A few responses commented on the relationship between the proposed Convention and the proposed Recommendation. An employers' organization considered that the purpose of the Recommendation should be to provide practical advice consistent with the terms of the Convention, rather than to extend the protection offered under the Convention to a higher level. Another considered that member States ratifying a Convention thereby committed themselves to aiming for the objectives and standards set out in the Recommendation and argued, on this basis, that the standards established in the Recommendation should not be unreasonably high. Article 19, paragraph 1, of the ILO Constitution provides that a Recommendation is adopted "to meet circumstances where the subject, or aspect of it, dealt with is not considered suitable or appropriate at that time for a Convention". The Office points out that

Recommendations indeed give guidance on what "should" be done, rather than "shall". They provide such guidance on policy, legislation and practice for implementing a Convention, which may be too detailed and prescriptive for the Convention, and can also set out higher standards that member States are encouraged to work towards but are not yet appropriate for a Convention. A Recommendation may be autonomous in that it covers a particular subject or may be auxiliary to an international labour Convention adopted at the same time. In this way, it may supplement provisions of a Convention. However, Recommendations do not impose binding obligations on member States that decide to ratify the related Convention. Deviations from a Recommendation cannot be considered per se as violations of international law. At the same time, they cannot be considered to be irrelevant to those which have not ratified the Convention, because of their role in providing guidance and orientation to Members.

Some replies referred to the existing Conventions on maternity protection, Nos. 3 and 103, and argued that Convention No. 103 should remain in force after the adoption of the new Convention. It was emphasized in this regard that agreement on the new Convention could be easier to achieve if it was clear from the outset that Convention No. 103 would remain open for further ratification in the future, and that accordingly the subject of final clauses should be dealt with at the beginning of the Conference. While it is true that it might make it easier to secure consensus on the text of a new instrument if a decision had already been taken to keep the previous Convention open for future ratification, this suggestion raises a number of issues for consideration. During the Committee discussion, the Office was asked for clarification regarding a proposed amendment, which was later withdrawn, to the effect that the ratification of the proposed Convention would not mean *ipso jure* denunciation of Convention No. 103, which would not cease to be open to ratification when the new Convention came into force. This would have been a departure from a standard final provision of Conventions since 1946, which specifies that ratification of a new revising Convention "shall *ipso jure* involve the immediate denunciation" of the revised Convention, and that upon the coming into force of the revising Convention, the revised Convention "shall cease to be open to ratification by the Members". The Office stated that if there was good reason for such a departure from the standard provision, it would have to be examined during the preparatory work. In such a case, it would be necessary to determine whether it should be possible for Members to be parties to both Conventions and, if so, what the consequences would be in cases of inconsistency in their provisions. Such a determination could not however be made until the exact content of the revising Convention is known. For this reason, the Office considers it appropriate to leave any decision on a departure from the standard denunciation provision until the content of the proposed Convention has been established.

Some other responses suggested that the new instruments should complement other related international standards, and that the Preamble should refer specifically to these. The Social Security (Minimum Standards) Convention, 1952 (No. 102), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Workers with Family Responsibilities Convention, 1981 (No. 156), were mentioned in this respect, together with the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This question is dealt with in the Office commentary on the Preamble.

Observations on the proposed Convention concerning the revision of the Maternity Protection Convention (Revised), 1952[6]

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-eighth Session on June 2000, and

Noting the need to revise the Maternity Protection Convention (Revised), 1952, and the Maternity Protection Recommendation, 1952, in order to recognize the diversity in economic and social development of Members and the development of the protection of maternity in national law and practice, and

Recalling that many international labour Conventions and Recommendations include provisions concerning maternity protection, and

Having decided upon the adoption of certain proposals with regard to the revision of the Maternity Protection Convention (Revised), 1952, and Recommendation, 1952, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this day of June of the year two thousand the following Convention, which may be cited as the Maternity Protection Convention, 2000:

Observations on the Preamble

Austria. BAK. The proposed short title "Maternity Protection Convention, 2000" is appropriate.

Denmark. Accepts the title and content of the Preamble in recognition of the fact that the objective of the revision of the Convention is to protect maternity.

Egypt. Proposes that the Preamble include references to the Night Work (Women) Convention (Revised), 1948 (No. 89), and Protocol, 1990, and the Night Work Convention, 1990 (No. 171).

El Salvador. The Preamble is effective. A change in the title, based on a larger proposal to develop international labour standards relating to "parental leave", is to be welcomed.

Estonia. The title should be discussed further. The title "Maternity Protection Convention" is a follow-up to Convention No. 103, and is clear for everybody, but gives the illusion that women's maternity is protected, whereas in the meaning of the Convention only working women who are pregnant or have recently given birth are covered. Owing to the above, the title of the European Union (EU) Directive[7] refers to "Measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding". For greater clarity, in the revised and supplemented European Social Charter adopted by the Council of Europe, Article 8 is entitled "The right of employed women to protection of maternity". An alternative proposal for a gender-neutral title referring to "rights concerning pregnancy, birth and early childhood" expresses the possibility that both parents may use parental leave. The Government prefers an alternative title.

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[6] The observations are preceded by the relevant texts as given in the proposed Convention set out in Report IV(1).

[7] Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, in *Official Journal of the European Communities* (Brussels), Vol. 35, No. L348, 28 Nov. 1992, pp. 1-7.

Finland. Since Convention No. 103, other international conventions have been adopted which include provisions on maternity protection. It does not appear from the report that the Office has studied the relationship of the Convention being prepared to other international conventions addressing the same issue. Such conventions include at least: the United Nations Convention on the Elimination of All Forms of Discrimination against Women (1979), the United Nations Convention on the Rights of the Child (1989) and the European Social Charter (1961) and its Additional Protocol (1998).

Those documents, and especially the United Nations Conventions, provide a framework for the new Convention being prepared by the ILO. During the preparatory work, attention should be paid to what is known as the international maternity protection standard, constituted by the abovementioned international conventions. It would also be desirable in the preparatory work to show how the proposed Convention relates to other international conventions, especially those adopted by the United Nations, which include provisions on maternity protection. It is possible that such an approach would encourage States to ratify the new Convention.

Germany. BDA. The Preamble should set out the status of maternity protection and state the interests to be taken into consideration. Accordingly, after "in national law and practice, [and]" in the third paragraph, the following new paragraph should be inserted: "Emphasizing that maternity protection at work is an issue affecting society as a whole, where the interest in maternity protection has to be harmonized with the needs and circumstances of enterprises and with the aim of promoting employment, in particular improving the employment prospects of women."

Spain. CCOO. Proposes a change of the title to "Convention on rights concerning pregnancy, birth and early childhood", which would enable inclusion in the text of provisions on adoption and parental leave and should be taken into account in the Preamble. In the third paragraph, the words "the development of [the protection of maternity]" should be changed to "advances in". The positive development in maternity protection standards in recent years in all countries should be recognized. At the same time, the preceding phrase "the diversity in economic and social development of Members" would reflect the fact that different degrees of protection are provided in different countries. In the fourth preambular paragraph, the words "international labour Conventions and Recommendations" should be replaced with "international provisions, Conventions and Recommendations". This change would widen the frame of reference and acknowledge other international instruments in this area, such as the Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women and the United Nations Convention on the Elimination of All Forms of Discrimination against Women. If the Office considers that the proposed amendment may cause legal difficulties, the reference to these other international instruments could be included in a separate paragraph.

UGT. The discussion concerning the proposal to change the title to include a reference to "rights concerning pregnancy, birth and early childhood" would have to be based on a comprehensive consideration of all these aspects from the gender perspective, rather than focusing narrowly on a right intended solely for women. The title of the Convention should either indicate that the Convention concerns specific aspects of maternity in the workplace which affect the health of women workers and their children and women's employment rights, in which case specific measures to protect women workers are called for or, alternatively, a broader approach may be adopted, covering aspects of childcare after birth which pertain to the rights of male as well as female workers. Establishing specific maternity protection provisions on the basis solely of women's particular rights would have to be justified on biological and health grounds. Otherwise, there could be gender discrimination in contravention of the principle of equality of opportunity and treatment embodied in the ILO's own declarations and resolutions. The UGT is inclined to favour changing the title by including a reference to "rights concerning pregnancy, birth and early childhood", provided that the contents of the Convention are also revised from a gender perspective encompassing the rights of working fathers and going beyond measures aimed solely at protecting the health of mothers and children during pregnancy and the postnatal and nursing period.

United States. No objection to a more gender-neutral title. Although both prior Conventions are geared towards protecting the health and employment rights of working women during pregnancy, childbirth and postnatal care, a gender-neutral change would more accurately reflect the world's increasing need to broaden the scope of employment protection to both working parents. There has been a substantial increase in the number of working fathers who take a more active role in postnatal care.

Office commentary

Very few comments were received on the Preamble. A few replies suggested widening the reference to other related standards, to include international instruments such as the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the United Nations Convention on the Rights of the Child, the Beijing Declaration and Platform for Action or the European Social Charter. One response suggested that the Office should show how the new Convention would relate to these instruments, since this might encourage ratification. Another reply suggested that reference be made to the ILO standards relating to night work for women. The Office points out that these additional references would not alter the substance of the Convention. With the aim of maintaining a concise Preamble, and in view of the fact that there did not seem to be widespread support for a detailed listing of other related international instruments, the Office has not proposed any change in the text in this regard.

Several replies dealt with the title of the proposed Convention and referred to the proposals that had been made during the first discussion to broaden the scope of protection to both working parents, through provision for parental leave and for the coverage of adoptive parents. In this regard, one respondent mentioned the greater role now being played by fathers in postnatal care. Another pointed out that, if a narrow focus on women's rights were to be maintained instead of adopting a broader approach encompassing the rights of working fathers, this would have to be justified on biological and health grounds or it would be discriminatory. The Office points out that, to the extent that the rights contained in the proposed

Convention all spring from the need to protect women workers in relation to the impact on them at work of the biological function of maternity, they could not be considered to be discriminatory. As noted above, in the commentary on the general observations, a majority of respondents preferred a Convention limited to maternity protection at work, rather than a broader approach on rights concerning pregnancy, birth and early childhood.

One reply suggested replacing the reference in the second preambular paragraph to "the development of the protection of maternity", to "advances in the protection of maternity", since there had been positive developments in all countries. It was pointed out that the differences between countries would still be adequately recognized in the first part of the paragraph. Another reply proposed a new paragraph in the Preamble, setting out the different interests that should be taken into consideration in achieving maternity protection, as well as the status of the issue, which affects society as a whole. Since there was no indication of more widespread support for these suggestions, the Office has not adopted them.

DEFINITIONS

Article 1

1. For the purposes of this Convention:

(a) the term "woman" applies to any female person without discrimination whatsoever and the term "child" applies to any child without discrimination whatsoever;

(b) the term "maternity leave" means the leave referred to in Article 3 of this Convention;

(c) the term "additional leave" means the leave referred to in Article 4, paragraph 3, of this Convention.

Observations on Article 1

Australia. In the context of the definition of a "woman", Office legal advice states that the meaning of "discrimination" would be the same as that used in Convention No. 111. Consideration needs to be given to the full definition of discrimination in Convention No. 111, which includes an exception relating to the *inherent requirements* of the job (Article 1, paragraph 2). The importation of this exception into the new standards on maternity protection raises the possibility that an otherwise discriminatory practice on the grounds of maternity may be justified on the basis that not being pregnant and/or not being a lactating mother is an inherent requirement of the job.

Austria. In principle, the Government is in favour of the new wording "without discrimination whatsoever" with regard to both the woman and the child. However, the indication by the Office that "discrimination" has the same meaning as in Convention No. 111 creates a problem: marital status is not one of the prohibited criteria for "discrimination" as defined in that instrument, so States with laws excluding unmarried women from the minimum provisions of the Convention could ratify the instrument without amending their legislation. Similarly, whether a child is born of marriage or not is not one of the criteria for discrimination that are prohibited by Convention No. 111. The original wording ("whether married or unmarried" and "whether born of marriage or not") should be retained or, alternatively, the new wording be retained together with an explanation to make it clear that unmarried women and children born outside marriage may not be excluded from the scope of the instrument. The definitions in subparagraphs (b) and (c) appear to be redundant, since in any case only Article 3 and Article 4, paragraph 3, are referred to. Only a stand-alone definition of the terms would make sense.

BAK. In principle, endorses the revised wording "without discrimination whatsoever" applied to both mother and child. However, the indication that "discrimination" would have the same meaning as in Convention No. 111 is problematic in the sense that marital status is not one of the prohibited criteria for "discrimination" in that Convention, which means that States with legislation excluding unmarried women from the minimum standards could ratify the Convention without amending the legislation in question. Either the original wording should be retained ("whether married or unmarried" and, similarly, "whether born of marriage or not") or the new wording should be used but with a clear indication that unmarried women and children born outside marriage may not be excluded from the terms of the Convention. This might take the form of a reference to a Convention other than Convention No. 111.

Barbados. The inclusion of subparagraphs (b) and (c) is supported. It is understood that the adoptive mother and adopted child are excluded from the provisions of the Convention.

BEC. Notes that the Office indicates that, in the current draft, the term "child" does not cover adoptive children.

Belgium. National Labour Council (CNT). If the definition of "woman" no longer refers expressly to marital status, it should nevertheless be clear that women cannot be discriminated against on account of their marital status. Neither the proposed Convention nor the proposed Recommendation defines what is meant by "confinement". The absence of a definition could lead in certain cases to difficulties in interpreting the provisions on leave, for example where pregnancy did not reach a certain duration or where the child died. The term "confinement" should be defined.

Benin. CNP-BENIN. Including adopted children and extending protection to adoptive mothers would make the instrument too rigid. The instrument clearly refers to maternity protection, which presupposes that the women concerned go through the stages of pregnancy and nursing. This would exclude adoptive mothers.

Brazil. National Confederation of Commerce (CNC). The provisions apply to employed women who are forced to absent themselves from work at a certain stage of pregnancy and for a period before or after birth. The word "child" in this context can only be taken to mean a child to which a gainfully employed mother has given birth during the period of maternity leave.

China. Amend the term "woman" to mean "a married female person (or a female person in a marriage approved by law)".

Croatia. The words "applies to" should be replaced by "means" in the first and second line of subparagraph (a), since these are definitions.

Denmark. The proposed text is adequate, and should form the basis of further work on the Convention.

Egypt. The phrase "without discrimination" requires further clarification from the ILO Legal Adviser.

El Salvador. As the term "child" does not include adopted children, the Convention will be aimed solely at guaranteeing protection for working mothers who take leave from work as a result of pregnancy. This is in keeping with its spirit. Considers it consistent to define "woman" as "any female person without discrimination whatsoever".

Germany. Since national law can give more extensive rights than the Convention, there is no need for the definition of "child" to cover adopted children. In view of the non-prejudicial nature of the definition with regard to any unwanted extension in the scope of the provisions, the definition "any child without discrimination whatsoever" could be accepted.

BDA. The new formulations are misleading. The phrase "any child without discrimination whatsoever" gives the impression that adopted children are also covered. It is only in the Office commentary that it becomes clear that this is not intended. Wording should be chosen which makes it clear that adopted children are not covered.

DAG. There must above all be no discrimination against unmarried mothers and their children born outside marriage, in order to protect the growing number of single parents, the majority of whom are women. Clarification of the text is needed.

German Confederation of Trade Unions (DGB). The text must clarify that the definition of "discrimination" covers a wider scope than that of Article 1, paragraph 1, in Convention No. 111. Above all, discrimination towards a mother and her child owing to her unmarried status must be excluded.

Greece. Agrees with the proposed text.

Guatemala. CACIF. The text could be wrongly construed to apply to adopted children. Either formulate an exception to make it clear that the term "child" does not include adoptive children, or include a specific provision on parental leave in the case of adoption of a child, the duration to be fixed by the legislation of each country.

India. Bharatiya Mazdoor Sangh (BMS). The eligibility of unmarried women for maternity benefits is opposed. A permissive society offering these benefits to such women should not be promoted.

Italy. Convention No. 103 explicitly underlines that matrimonial status shall constitute neither a legal nor a moral restriction for mothers or children. A clearer formulation of the terms "woman" and "child" is necessary to safeguard every woman's and every child's right to health. Legislation extending the right to maternity protection to adoptive mothers would be particularly timely.

CGIL, CISL and UIL. Motherhood is a social asset to be safeguarded against any form of discrimination or imposition in dealings with women and children. The definition of "woman" or "child" already seeks to set moral limits on the very lawfulness of being mothers or children. If the term "discrimination" had the same meaning as in Convention No. 111, which does not cover marital status, this would leave Members free to exclude unmarried women and would not legally guarantee that the right be extended to adoptive mothers and children. This would be an arbitrary interpretation and would certainly not be in line with the spirit of the Articles, which are framed for positive action to be taken in this respect. The wording must safeguard the right to health of every woman and every child in practice.

Japan. JTUC-RENGO. Agreed.

Jordan. "Woman" should be defined as "a married woman", and "child" as "the legitimate child of married parents".

Amman Chamber of Industry (ACI). Taking into account Jordan's traditions and customs, the definition of a woman who has the right to maternity leave should be "a married woman who works", not any female person.

Republic of Korea. It is not desirable that "adopted children" and "adoptive mothers" be included in the scope of the Convention.

Federation of Korean Trade Unions (FKTU). It must be specified that the term "woman" includes a woman in de facto marriage and an unmarried mother.

Lebanon. To facilitate ratification by the largest possible number of member States, definitions of the terms "woman" and "child" should be left to Members in view of their varying social, religious, and legal circumstances. Subparagraphs (b) and (c) are apt.

Malaysia. The term "child" should not include an adopted child. Maternity leave should not be extended to adoptive mothers.

Malaysian Employers Federation (MEF). The words "without discrimination whatsoever" should be deleted. Such a phrase implies that women and children have been discriminated against.

Netherlands. Requests clarification regarding the exact scope of the phrase "without discrimination whatsoever". Specific inclusion of a prohibition against "discrimination on grounds of marital status" should be included.

FNV. A new Convention should clearly prohibit discrimination against women on the basis of marital status or against children on the basis of whether or not they are born out of marriage.

Pakistan. Cannot endorse coverage of unmarried women, as it is against Pakistan's religion and the law of the land. It will not be possible to support the proposed instrument unless the definition of "woman" clearly excludes unmarried women.

EFP. The words "without discrimination whatsoever" used for women includes both married and unmarried women. Extra-marital sex or conception is not only against the basic principles of Islam, but is also an offence under national legislation. If the proposed Convention is adopted and subsequently ratified, it will provide protection to women who have committed a crime. It will not be possible for any Islamic country to ratify the Convention unless the definition of "woman" clearly excludes unmarried women from its scope.

Philippines. Understands the phrase "without discrimination whatsoever" in reference to the definition of "woman" and "child" to mean that the contract of marriage should not be a prerequisite to maternity protection, and that ethnic, cultural and religious backgrounds of working women should not be used as a basis of discrimination against them in their entitlement to maternity benefits. Under national legislation, only married female government employees qualify for maternity leave benefits. The Civil Service Commission, the central personnel agency of the Philippine Government, is strict on morality, thus single female employees are excluded from protection.

Portugal. "Any child without discrimination" is very broad and could be read as including adopted children. However, the rights laid down in the proposed Convention, by the very nature of things, apply to biological children.

CIP. The word "child" is technically inadequate since there is no indication of age.

South Africa. BSA. The wording "without discrimination whatsoever" seems acceptable, provided subsequent Articles are not amended during the course of the Conference to include an adoptive mother or an adopted child.

Spain. CCOO. The phrase "without discrimination whatsoever" is understood to mean that all women are covered, irrespective of their civil status, and that both natural and adopted children are covered, with provisions concerning protection of adopted children to be established in the Convention.

Switzerland. Against any change to cover an adopted child.

Turkey. TİSK. Subparagraphs (b) and (c) are noted with satisfaction.

United Kingdom. CBI. The proposed Convention is already too wide-ranging, and should not be extended further by seeking to encompass adoptive mothers.

United States. This paragraph as presently drafted is supported.

USCIB. Understands the term "child" to exclude adoptive children. Inclusion of adopted children would present yet another obstacle to ratification.

Venezuela. CTV. The terms "woman" and "child" should retain these broad definitions.

Office commentary

In relation to the definition of "woman", some governments considered that unmarried women should not be covered by the Convention, while another government suggested that the definition should be left to the discretion of member States, in view of their varying social, religious and legal conditions. On the other hand, some other governments and workers' organizations expressed a concern to ensure that there should be no discrimination on the basis of marital status and sought to clarify that the proposed definition would prevent such discrimination. Their concern was based, at least in part, on the Office's advice that the term "discrimination" would have the same meaning as in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). These respondents pointed out that Convention No. 111 does not refer to marital status and sought clarification by the Office in this regard. The Office has further reviewed the implications of the definitions in the light of these concerns. It understands the intention of the amendment adopted during the first discussion to have been to retain a very broad definition, which would preclude discrimination on the grounds of marital status as well as the grounds specified in Convention No. 111, to the extent that they are relevant in this context. It considers that the phrase "without discrimination whatsoever" would adequately give effect to this intention. As concerns the possibility, in Convention No. 111, of exceptions based on the inherent requirements of the job, this might be relevant to the protections provided to women in relation to maternity, but it could not apply to the definition of "woman" itself. This issue is taken up in more detail in relation to Article 8. In view of the amendments adopted by the Committee, which were intended to carry over and extend the principles of non-discrimination contained in Conventions Nos. 3 and 103, as well as the lack of agreement in the responses on this point, the Office has left the text unchanged.

Maternity protection in relation to adopted children

The definition of "child" adopts the same approach as that used for "woman", in the use of the phrase "without discrimination whatsoever" but, as the replies brought out clearly, quite a different issue is involved. In this case, disagreement centred on the question whether adopted children (and therefore adoptive mothers or parents) should be covered under the Convention. The Office had also invited views on the possible inclusion in the Recommendation of a provision which would extend rights concerning maternity protection to adoptive parents, in particular those related to leave, benefits and employment protection. On the general question as to whether or not this matter should be covered in either of the proposed instruments, there was an equal number of positive and negative responses from governments, while workers were consistently in favour of and employers were strongly against such coverage. The negative replies were primarily based on the view that extending the instruments to cover adoption would go beyond the stated purpose of ensuring maternity protection, which was considered applicable only to pregnant women who give birth to a child. The particular needs to be protected were the health of the mother prior to birth and her physical recovery thereafter. From their standpoint, as adoption does not involve pregnancy, childbirth or nursing, it was inappropriate to provide for it in the current instruments. Responses did not suggest that adoption should not be covered by standard setting; rather, it was suggested that it needed to be elaborated upon in a separate instrument in light of its special characteristics. Several replies indicated that the Workers with Family Responsibilities Convention, 1981 (No. 156), and Recommendation (No. 165) might be a more appropriate context for provisions on adoption. Only one reply referred to the extra costs for social security systems that protection for adoptive mothers would require.

Some replies focused on the assertion that inclusion of such a controversial topic in an instrument would be a significant obstacle to ratification. As was made evident in the first discussion, a number of Members did not accept the principle of adoption at all owing to their different cultural traditions, customs or religious precepts. One Member proposed that this incompatibility could be dealt with by leaving it open to the Member to decide on its own definition of "child" and "woman"; others proposed specifically excluding adopted children and adoptive mothers from the definitions under Article 1, while covering adoption either in an optional part of the Convention or only in the Recommendation, or permitting Members to exclude them from coverage if their laws did not recognize or provide for adoption.

Those replies that supported extending protection to adoptive mothers generally did so on the basis that there was a need for protection of adoptive mothers, that this did relate to maternity protection, and that something should be done now to address the issue. To do so was considered in one reply to be consistent with the ILO objective of providing employment protection for women who were bearing dual responsibilities of wage earner and parent, as well as with a spirit of non-discrimination in ensuring that biological and adoptive mothers receive equal treatment. Several replies emphasized that the purpose of the proposed Convention was to protect "maternity" irrespective of whether or not it was biological or adoptive. In this regard, while noting that the same degree of protection might not be needed for both kinds of maternity, it was considered that adoptive mothers should have leave, financial benefits and employment security commencing at the time of the arrival of the adopted child. In several replies it was noted that the need for such benefits would depend on the age of the child at the time of adoption. For example, an adoptive mother of an infant child might need more leave than would be the case if the child were older. It was pointed out that an aspect particular to the nature of adoption was the initial stage at which the child's physical and emotional health was assessed and provided for, and the critical bonding process between mother and child begun.

It was pointed out in one reply that the phrase "without discrimination whatsoever" does not of itself exclude adopted children and that the practice of dealing sequentially with provisions makes it impossible to guarantee that subsequent amendments would not seek to extend rights to adoptive mothers and children. Another reply considered the definition to be technically inadequate, in that it gives no indication of the age of a "child". However, the question of the child's age would be relevant only in some cases of adoptive children; in relation to a mother's natural children it would necessarily apply to newborns.

There was a misapprehension in at least one of the replies that the Office, in its comments in Report IV(1), was encouraging an amendment so as to include adoptive mothers and children, despite the Committee's rejection of an amendment to the proposed Recommendation which would have extended to adoptive parents all rights provided for in the Convention with respect to the postnatal period of maternity. This was not the intent of the Office's comment, which in fact recalled this decision by the Committee and merely sought to clarify for Members the implications of the proposed text. As noted in Report IV(1), the inclusion of adopted children in the definition of "child" would in any case not actually provide for any specific protection in the sense that none of the substantive provisions of the proposed Convention could be construed as extending protection to adoptive mothers or adoptive children. While the replies suggest that there might be support for establishing international labour standards that would protect adoptive mothers, it was also pointed out in a large number of replies that the stated purpose of the two proposed instruments was to protect employed women who became pregnant and gave birth to a child. In view of the majority opposed to the extension of provisions for adoptive mothers and children, as well as, more generally, of the preference for a Convention with a clear focus on maternity protection, the Office has left the text unchanged. The Office considered amending the text to specify that the term "child" applies "to any child born of that person without discrimination whatsoever". Such an amendment could, if this were felt by Members to be necessary, be used so as to explicitly exclude adopted children. However, the Office has not suggested this change at this stage, since from the drafting viewpoint it would not change the substance of the Convention at all.

Very few comments were received on the definition of "maternity leave" or "additional leave" and most of these supported the proposed text. However, one government pointed out that the definitions were redundant, since they merely referred to other provisions in the Convention. In the provision for leave in the case of illness or complications, discussed below under Article 4, the Office has suggested amendments which would obviate the need for separate definitions of "maternity leave" or "additional leave" and these have accordingly been omitted in Article 1.

Since the remaining definitions of "woman" and "child" relate more to the scope of the Convention than to the actual definition of these terms (as illustrated by the pertinent observation of one government that the phrase "applies to", used in relation to "woman" and "child", was not appropriate in an Article concerning definitions), the Office has placed both Article 1 and Article 2 under the heading "Scope".

SCOPE

Article 2

1. This Convention applies to all employed women.

2. However, each Member which ratifies this Convention may, after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from the scope of the Convention limited categories of workers or of enterprises when its application to them would raise special problems of a substantial nature.

3. Each Member which avails itself of the possibilities afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, list the categories of workers or of enterprises thus excluded and the reasons for their exclusion. In its subsequent reports, the Member shall describe the measures taken with a view to progressively extending the provisions of the Convention to these categories.

Observations on Article 2

Australia. All employed women should be covered by the new instruments, with provision for exemptions according to national law and practice.

Austria. BAK. Employed persons who do not come within the traditional definition of employed worker (various freelance and contract workers, homeworkers, etc.) constitute an increasing proportion of the labour market and are in particular need of protection. Suggests using or referring to the definitions used in the Home Work Convention, 1996 (No. 177). No objection to the removal of the phrase "and notwithstanding Point 5".

Belgium. CNT. The phrase "and notwithstanding Article 1" in paragraph 2 would have been confusing.

Bulgaria. Paragraph 1. Maternity protection should be extended to all categories of work and the Convention should apply to all women wage earners. Protection of the health and welfare of pregnant women and infants should be based first and foremost on medical criteria, rather than on social or economic considerations aimed at excluding certain categories of pregnant women. The scope provisions of Convention No. 103 should be retained, while the list of categories and activities should be expanded and updated.

Canada. Based on the wording of the Convention, and taking into account the Office commentary under Article 2, it is not clear that a minimum length of employment requirement for eligibility for pregnancy and parental leave would be in compliance.

CEC. The conditions required to validate an exclusion from maternity leave are too restrictive and too cumbersome in terms of procedure. They would require amendment to the provisions currently in effect.

CLC. The Convention should maintain a broad scope – "all employed women" as a minimum text – and a low ceiling for exclusions.

Chile. Exclusion only requires that the application of the Convention "would raise special problems of a substantial nature". These terms seem extremely broad and discretionary, and could lead to a considerable reduction in the coverage of the maternity protection standards for vast sectors of economic activity. Female employment tends to be concentrated in tertiary activities or services characterized by considerable mobility and dynamism. Enterprises must constantly adapt to remain competitive in aggressive markets. This makes them likely to resort to excuses concerning the application of maternity protection for women workers in the terms contained in the proposed instrument. A considerable portion of female employees could be legally excluded from maternity protection, which would render the instrument ineffective.

It is inadmissible to allow categories of working women or economic activities to be excluded from the maternity protection standards. This would exacerbate the casualization of employment in vast sectors of the economy that have the worst conditions of employment and account for a large share of female employment.

Single Central Organization of Workers (CUT). In order for the Convention to apply to all employed women, without any discrimination whatsoever, it is important to define the term "employed woman" (*mujeres asalariadas* in Spanish) in such a way that it includes self-employed workers who are not covered by any social protection schemes. Paragraph 2 is of great concern. The absence of internationally agreed criteria for the total or partial exclusion of particular categories from the scope of the Convention, combined with limited possibilities for negotiation, mean that there is a risk of serious abuse.

Croatia. Article 2 as drafted allows for greater restriction in the application of the Convention than Convention No. 103 does. Either paragraphs 2 and 3, or the words "or of enterprises" in those paragraphs, should be deleted.

Czech Republic. Czech-Moravian Confederation of Trade Unions (CMK OS). The possibility provided to Members to exclude whole enterprises from the application of the Convention is not supported, as it would substantially weaken the text. Exclusion of categories of workers should not be based on grounds which constitute discrimination, and this should be stressed in the text.

Ecuador. Agrees.

Egypt. Agrees to paragraph 2.

Agrees to paragraph 3 if women farm workers are exempted.

Federation of Egyptian Industries (FEI). Certain informal sector categories must be excluded, such as (1) the agricultural sector, (2) domestic workers, (3) family undertakings (where members of the same family are employed), and (4) productive families. Employment in these sectors is of an informal nature that is difficult to assess. It would be difficult to apply these Conventions to women workers in family undertakings or productive families working from their homes.

Estonia. Estonian Association of Trade Unions (EATU). Given the trend towards flexible labour relations and new forms of work organization, a growth in the number of self-employed persons can be foreseen. They should be covered under paragraph 1 and not excluded under paragraph 2.

Germany. Should any proposals be made to extend the scope beyond "all employed women", it must be ensured that self-employed persons are not covered. The wording "after consulting" in paragraph 2 implies that the Government is not bound by the social partners' view regarding which categories of workers or enterprises can be wholly or partially excluded from the scope of the Convention, but is only obliged to consult the social partners.

DAG. The Convention must apply to all employed women. The exclusion of certain groups of women from the scope of maternity protection is not supported. Exclusions, if any, should only be possible in the first Article 22 report.

DGB. It is vitally important that exclusions be listed only in the first Article 22 report. Women who are casual workers in developing countries must not be excluded. The DGB favours replacing "employed women" with "all women workers, including dependent contract workers, homeworkers and casual workers".

Greece. Agrees that the Convention should apply to all women wage earners.

India. As current national legislation excludes some regions, it is not consistent with this Article.

Italy. The definition of "woman" in Article 1 does not deny Members the possibility of excluding from the scope of the Convention women who work on their own account and those who are not working. The second paragraph of Article 2 authorizes the exclusion of other categories of women workers (or of enterprises). Cannot agree with the possibility of excluding "wholly or partly from the scope of the Convention limited categories of workers or of enterprises". There should be a precise time-frame during which the provisions of the Convention should be extended to the excluded categories.

CGIL, CISL and UIL. The term "employed women" excludes outright all those women involved in various alternative forms of employment, such as temporary or fixed-term homeworkers, even though it has been proven that they are dependent for their livelihood on a single company or employer. This will provide an incentive for employers to enter into less formal or non-standard working arrangements that exclude the right to protection and benefits. Wording which reads "all working women" would mean all women engaged in gainful work or employment. A compromise solution could be to have specific wording: "including those women with fixed-term and/or non-standard forms of dependent working relationships".

Japan. JTUC-RENGO. Supports paragraphs 1 and 3. It is important to limit exemptions to a minimum. The definitions of workers given in the Part-Time Work Convention, 1994 (No. 175), the Home Work Convention, 1996 (No. 177), and the Private Employment Agencies Convention, 1997 (No. 181), as well as the situation of workers in export processing zones (EPZs), should be taken into consideration.

Republic of Korea. The term "all employed women", which excludes self-employed and unemployed women, is a more applicable term than "women at work".

FKTU. The phrase "all employed women" should be replaced by "women at work" so that home-based workers and teleworkers can be included in the scope of application. Those women whose status is somewhere between that of employees and the self-employed, but is similar to that of employed workers (economically dependent), should also be protected.

Lebanon. The phrase "limited categories of workers" should be replaced by "limited categories of employed women", as it may lead to differences of opinion between the Member and the Committee of Experts on the Application of Conventions and Recommendations in respect of the excluded categories. The text should be clarified further by adding "to be determined by each State in accordance with national legislation" after "or of enterprises" in paragraph 2. It may be difficult to reach a consensus on the meaning of the phrase "raise special problems of a substantial nature". It is not easy to define such problems clearly owing to the broad connotations of such a phrase. The text should therefore be replaced by "to be determined by each State in accordance with national legislation", as indicated above. The phrase "describe the measures taken" should be replaced by "describe what measures have been taken", as there is no obligation on Members to take any measures if they do not find it appropriate to do so.

Malaysia. MEF. The word "workers" in paragraph 2 should be replaced with "female employees" or "women" as the intention of the Convention is to cater to employed women.

MTUC. The Convention should apply to all working women.

Morocco. Democratic Confederation of Labour (CDT). Any exclusions or exceptions to the application of the Convention should be ruled out. The only criterion that should apply is that a woman be employed by an employer.

UMT. This Convention should apply to all working women. Replace "after consulting" by "with the agreement of".

Namibia. Namibia People's Social Movement (NPSM). After "employed women", add the phrase "within the formal and informal sector and those separated from employment due to structural adjustment programmes". At the end of paragraph 2, add the phrase "only when it is in favour of the workers".

Netherlands. FNV. The Convention should apply to all women workers, including dependent contract workers, homeworkers and casual workers. In view of the possibility of exclusions, there seems hardly any reason why "all employed women" should not be replaced by "all women workers".

New Zealand. NZEF. It should be possible to exclude categories of workers under qualifying criteria where these are appropriate to national circumstances.

Poland. Independent Self-Governing Trade Union "Solidarność" (NSZZ "Solidarność"). Conditions for exclusion should be more precisely defined to avoid discrimination against women working in certain branches or sectors. Protection against discriminatory practices in the form of Members' consultations with their employers' and workers' organizations as well as in the form of reports on the categories excluded and reasons for their exclusion are not sufficient. To limit the risk of discrimination, it seems advisable to introduce time limits for possible exclusions, with the reservation that, after the expiry of such time limits, the Convention would apply to such cases.

Portugal. Agrees with the text concerning criteria for determining who should receive benefits. One of the difficulties which prevented ratification of Convention No. 103 lay in the highly detailed provisions on scope. Paragraph 2 is more appropriate, as it places implementation on the same footing as the domestic legislation of the countries that wish to ratify it. Under paragraph 3, ratifying countries will be able gradually to extend the scope of coverage and this provision will encourage them to do so.

General Union of Workers (UGT). The possibility of excluding certain categories of workers or types of enterprises from the scope of the Convention is unacceptable.

Spain. CCOO. The term "employed women" should be replaced with "women who work" to include self-employed women. Countries whose social protection does not extend to this category could invoke paragraph 2, so the extension would not be an obstacle to ratification. Add at the end of paragraph 2: "and when this does not endanger the health of the woman or child. The reasons for such exclusion shall not be based on any of the prohibited grounds for discrimination".

UGT. Supports covering all women wage earners, without any possibility of restricting it to particular categories of workers.

Switzerland. This text is compatible with national legislation.

United Republic of Tanzania. The majority of women in the informal sector and among the self-employed are not protected under the current wording and should be covered.

Togo. Workers' Trade Union Confederation of Togo (CSTT). Replace the words "employed women" with "working women".

Turkey. TÍSK. The text is not flexible enough. It should aim for the maternity protection of women (with the exception of self-employed women workers) to be adopted and promoted within the framework of national legislation, with an arrangement to be made to determine, in a more realistic and flexible manner, the categories of workers to be excluded.

United States. Supports paragraph 1 as presently drafted. Clarification is requested as to whether the scope of the exclusion in the phrase "limited categories of workers or of enterprises" can include the size of the employer, that is, the number of workers employed by an employer, and not just the type of business in which the enterprise is engaged.

Uruguay. PIT-CNT. Regarding the guarantees against abuse of authority in deciding on exclusions, the PIT-CNT notes that only consulting the social partners, without requiring their agreement, leaves the Government free to make its own decisions. The vagueness of the phrase "limited categories of workers or of enterprises" and the lack of any criteria to define "limitation" can render this guarantee worthless. There are no guidelines about how to determine the "special problems of a substantial nature" used to justify exclusions.

Venezuela. CTV. The proposed text does not mention women wage earners working at home, to whom Convention No. 103 explicitly refers.

Office commentary

Paragraph 1

Comments on this paragraph were limited in number. Several replies indicated the need for a common understanding of the term "all employed women". During its discussions, the Committee requested clarification of these words, and the Office responded that the term referred to those women workers with a contract of employment, whether express or implied, and therefore excluded self-employed persons. Differences of opinion on the appropriate general scope of the Convention still remain, as indicated by several replies that suggested replacing "all employed women" with "women at work", thus extending the overall application of the Convention. The same proposal was made by the Workers' group within the Committee, but withdrawn because of a lack of support. Some replies wanted specific coverage for independent workers and the informal sector in general, in view of the growing number of women in these categories. Another reply went further and maintained that, given the ability to exclude workers under paragraph 2, there was little reason not to cover all working women under paragraph 1. However, it should be noted that this ability to exclude is a restricted one: only limited categories of workers or of enterprises may be excluded, and only when the Convention's application to them would raise special problems of a substantial nature. By raising such hurdles to be overcome before exclusions are permitted, the intention is to make clear that maternity protection should be provided to as many employed women as possible, and that any exclusions should be made with this purpose in mind.

The Office has not suggested any changes to the proposed wording of this paragraph given its apparent general acceptance.

Paragraph 2

Most comments supported the principle that exclusions of limited categories of workers or enterprises should be permitted, but some governments and workers' organizations strongly expressed the view that no exclusions should be possible, in one case underscoring that protection should be first based on medical criteria rather than on social or economic considerations. As a compromise, it was suggested in some comments that exclusions be permitted for a specific time period only, with the Convention applying automatically to the excluded category after such period of time has expired. However, other comments strongly supported the current text.

The meaning of the requirement of consultation continued to be an issue of concern. During its discussions, the Committee asked for clarification of the difference between the phrase "after consulting" (as used in the proposed text) and the phrase "in consultation with". The Office responded that while there appeared to be somewhat less discretion for governments implicit in the phrase "in consultation with", in both cases the final decision rested with the Member. There is also a difference in the process that must be undertaken. Where the requirement is to review or make a decision "in consultation with" representative organizations of employers and workers, the government must ensure that such organizations are involved in the relevant process. Where a review or decision, as under this paragraph, must be made "after consulting" representative organizations of employers and workers concerned, the government can only make its decision after having solicited the views of such organizations. While it is essential in both cases that consultations be carried out in good faith, the final decision is the responsibility of the government. In addition, it should also be noted that under this paragraph "the representative organizations of employers and workers concerned" who must be consulted are those that represent workers in the categories of workers or enterprises that are under consideration for exclusion by the ratifying Member.

The replies revealed a need for further clarification regarding the meaning of "limited categories of workers or of enterprises". During the Committee discussion, the Office was asked whether "categories of workers" could apply to casual workers, temporary workers, or those who do not meet eligibility criteria. The Office responded that "categories of workers" could cover those women employed on a temporary, casual or part-time basis, but was not intended to cover those employed women who did not meet eligibility criteria for maternity protection (such as length of service or period of contribution). It should be noted that while Article 3, paragraph 1, established an absolute entitlement to maternity leave (subject only to any permitted exclusion under this paragraph), under Article 5 "cash and medical benefits shall be provided, in accordance with national laws and regulations ...", thereby accommodating eligibility criteria established at the national level for such benefits. With regard to the proposed absolute entitlement under Article 3, paragraph 1, one Member suggested adding at the end of that paragraph the phrase "subject to minimum service requirement", thus permitting Members to establish an eligibility criterion for the basic leave benefit. Clarification was requested by the Government of the United States as to whether the scope of exclusion in the phrase "limited categories ... of enterprises" could include the number of employees employed by an employer, and not just the type of business in which the enterprise was engaged. While it would be permissible to exclude a category of enterprises of a certain size, it should be noted once again that the intention of the proposed wording of this paragraph was to make it clear that maternity protection should be provided to as many employed women as possible, and that any exclusions should be made with this purpose in mind.[8] As an additional point, the word "limited" could refer not only to the number of categories to be excluded, but also to the number of workers that could be excluded in a specific category (this was also provided for by allowing categories to be excluded "wholly or partly"). However, the intention underlying the use of the word "limited" was to make clear that exclusions should be made sparingly so that as many employed women as possible were provided with maternity protection.

To clarify that the focus of the Convention was on protection of women, it was proposed in two replies that "limited categories of workers" be replaced by "limited categories of employed women". The choice of the word "workers" instead of the phrase "employed women" was made to avoid any possible misinterpretation that might lead a ratifying Member to believe that it may only exclude categories composed solely of women rather than, as intended, categories of workers that include women.

One comment noted that it may be difficult to reach a consensus on the meaning of the phrase "raise problems of a substantial nature". This phrase occurs in 11 Conventions and one Protocol in provisions on the scope of the instrument that allow for exclusions, and has not yet resulted in problems of interpretation or application.[9] Another comment suggested that there was a need for a closer definition of the conditions required for exemptions. In the same vein, an amendment was proposed to replace "special problems of a substantial nature" with "special problems to be specified by each Member according to national legislation", thus emphasizing that it was for each Member to determine what was a special problem within the national context. The Office has suggested no changes to this paragraph given the differences that still remain on key issues, which are for the Conference to decide.

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[8] The term "categories of undertakings" occurs in Article 9, subpara. (b), of the Paid Educational Leave Convention, 1974 (No. 140), and in Article 1, para. 2, of the Protocol to the Plantations Convention, 1958 (No. 110). In both cases, the above term is used to permit a different application of the Convention for categories of undertakings based on their size.

[9] See Conventions No. 132, Article 2, para. 2; No. 148, Article 1, para. 2; No. 155, Article 1, para. 2; No. 158, Article 2, para. 5; No. 167, Article 1, para. 2; No. 170, Article 1, para. 2; No. 171, Article 2, para. 2; No. 172, Article 1, para. 2; No. 174, Article 2; and the Protocol of 1995 to Convention No. 81, Article 2, para. 1.

Paragraph 3

There were few comments on this paragraph, most of which expressed agreement with its content. One reply stressed that a listing of excluded categories must be possible only in the first report and not thereafter. A further comment suggested that "describe the measures taken" should be replaced by "describe what measures have been taken", to make clear that there was no obligation to take any measures if it was not considered appropriate to do so. While there may be no obligation to take such measures, the reporting requirement is intended to serve as a reminder to the ratifying Member of any exclusion made and the possibility of extending coverage to the excluded category. In view of the general agreement on its content, the Office has suggested no change to the text of this paragraph.

LEAVE

Article 3

1. On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of her confinement, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 12 weeks.

2. The length of the period of leave referred to above shall be specified by each Member in a declaration accompanying its ratification.

3. Each Member may subsequently deposit with the Director-General of the International Labour Office a further declaration extending the period of maternity leave.

Observations on Article 3

Argentina. National legislation refers only to "medical certificate" and not to "other appropriate certification".

UIA. The minimum standard for maternity leave should be 12 weeks' duration. It should not be extended beyond that period.

Australia. In order to prevent discrimination against women in employment on the grounds of maternity, pregnant workers should be entitled to take leave during pregnancy (for pregnancy-related reasons) and at the time of and immediately after the birth. The current 12-week standard should be maintained as a minimum entitlement.

Austria. BAK. Welcomes the proposed wording.

Bahrain. Twelve weeks often exceeds what is provided for in national practice.

Barbados. BEC. Twelve weeks should remain the minimum standard.

Belarus. The minimum period of maternity leave should be extended to 14 weeks.

Belgium. CNT. All women should have the opportunity to take leave following confinement. Provision should be made for entitlement to postnatal leave, unless such entitlement is given up.

Brazil. General Confederation of Workers (CGT). The period of maternity leave should be 16 weeks.

FS. The period of maternity leave should not be less than 17 weeks.

Bulgaria. Replace paragraph 3 with "Members are encouraged to make a declaration extending the period of maternity leave".

Canada. The phrase "subject to minimum service requirement" should be added at the end of paragraph 1.

Croatia. The new Convention should provide for broader rights than Convention No. 103. Sixteen weeks of leave is suggested.

Czech Republic. Paragraph 1 should be amended to make it clear that protection is provided in cases of stillbirth and in other cases when no birth takes place for whatever reason. The period of maternity leave should be no less than 17 weeks.

Denmark. Danish Confederation of Professionals Associations (AC), Salaried Employees' and Civil Servants' Confederation (FTF) and Danish Confederation of Trade Unions (LO). Leave should be not less than 14 weeks.

Ecuador. Agrees.

Egypt. Agrees to paragraphs 1, 2 and 3.

Eritrea. Minimum maternity leave should be reduced to 60 days.

France. Agrees.

MEDEF. Although the minimum period of 12 weeks for maternity leave does not constitute an additional constraint in relation to national legislation, it might for some other countries.

Germany. BDA. The text should be restricted to establishing the principle that women must be entitled to maternity leave. The Convention should not contain any provision concerning the minimum length of maternity leave. The phrase "of not less than 12 weeks" should be deleted. Paragraph 3 would then become unnecessary. Consideration should be given to whether the substance of paragraph 3 should be transferred to Paragraph 1, subparagraph (1), of the Recommendation to provide guidance.

DGB. The period of maternity leave should be increased to 14 weeks.

Greece. The Convention should contain a provision extending the period of leave in the event of multiple births. A period of six weeks of leave should be provided to protect the mother's health in the event of the death of the child after birth or in the case of stillbirth.

India. Agrees to the proposed length of maternity leave and the insertion of the word "other" before the word "appropriate" in paragraph 1.

Italy. Maternity leave should be increased to 14 weeks.

Japan. JTUC-RENGO. Supports this Article.

Jordan. ACI. The extension of maternity leave to 12 weeks could discourage employers from employing women.

Republic of Korea. FKTU. A woman who has a miscarriage for inevitable reasons should be entitled to leave commensurate to the maternity leave specified in the Article.

Lebanon. The economic and social conditions of some Members do not currently allow the prescription of a 12-week maternity leave. A more appropriate formulation might be found so as to enable each State to gradually extend maternity leave to 12 weeks as greater economic development is achieved, provided that a minimum reasonable duration of such leave is prescribed at the initial stage.

Malaysia. Maternity leave should be for a period of not less than 60 consecutive days.

MEF. The phrase "or other appropriate certification" should be deleted, as it would lead to uncertainty regarding the kind of certification required. The phrase "issued by a registered medical practitioner" should be added after the words "medical certificate", as only registered medical practitioners can issue a medical certificate.

Morocco. CDT. Women who suffer a miscarriage should be entitled to a period of leave of at least six weeks to protect their physical and mental health. Such leave is especially necessary in developing countries, where the risks of miscarriage are much greater for economic and social reasons.

Namibia. NPSM. Add at the end of paragraph 1: "The choice of commencement of the leave should be the prerogative of the worker and her medical practitioner."

Nepal. National legislation provides for 52 days' maternity leave.

Philippines. Any move to extend the duration beyond 12 weeks should be carefully considered in the light of economic realities, as such adjustment could result in discrimination against women workers in the hiring process.

Singapore. Eight weeks of paid maternity leave is adequate, particularly in the light of other benefits, such as childcare leave, compassionate leave and paternity leave, commonly granted by employers. It is also not uncommon for employers to grant leave without pay beyond the statutory entitlement.

Slovakia. Maternity leave should be not less than 14 weeks.

South Africa. BSA. Extension of the period of maternity leave beyond 12 weeks would be detrimental to the potential ratification of the Convention, and would go beyond the provision of a minimum universal standard. BSA would not support such an extension.

Spain. Requests clarification as to whether or not a declaration of a Member stating that its maternity leave is over 12 weeks would result in that length becoming the minimum length of maternity leave for that Member.

CCOO. This amendment would be a slight improvement on the minimum international provisions established at the beginning of the twentieth century. Three new paragraphs should be included, as follows:

> 2. In the case of illness, hospitalization or death of the mother of a newborn child before the end of the postnatal leave period, the employed father shall be entitled to a period of leave equal to the remaining period of postnatal maternity leave.
> 3. The entitlement to leave following the birth as stipulated in paragraph 1 of this Article may be used on the same conditions by an adoptive father or mother if the child is below the age of three years and national legislation allows for the possibility of adoption.

4. If a woman employee gives birth to a stillborn child or if the child dies before the end of the postnatal leave period, the woman shall be entitled to the full period of that leave.

This amendment provides for the possibility of the mother's illness or death or that of the child, safeguards the child's rights and allows the mother time to recover if the child dies. Paragraph 3 defines the possible leave entitlement of adoptive parents and allows countries where adoption is not legally possible not to implement the provision. It should thus not be an obstacle to ratification.

UGT. Agrees, if the period of 12 weeks is intended to protect the health of the worker and child. If the period includes a component for childcare, it should also cover working fathers. As regards "appropriate certification", the text should indicate that each member State should, in the event of problems in extending the medical certificate, indicate which authorities can extend the certificate.

Sri Lanka. Twelve weeks' maternity leave should be retained. However, there should be an optional provision that would reduce maternity leave to not less than six weeks for third and subsequent births and for stillbirths.

Switzerland. National legislation has no provision for maternity leave as such, only a ban on the employment of women during the eight weeks following childbirth. Under newly revised legislation, a worker's return to work is subject to her consent up to the sixteenth week following the birth.

UPS. The period of 12 weeks of maternity leave is a maximum one, especially at the international level. It must not be exceeded because it is already too high for many countries.

USS/SGB. The minimum period of maternity leave should be 14 weeks and the leave period should not be reduced.

FSE/VSA. A minimum period of leave of 14 to 16 weeks is appropriate. As a compromise to enable a large number of member States to ratify the instrument, a minimum entitlement of 12 weeks can be accepted, but should not be reduced. The provision for a period of 16 weeks should remain in the Recommendation.

Syrian Arab Republic. The phrase "or other appropriate certificate" in paragraph 1 should be deleted. A medical certificate can only be delivered by a specialist. No other certificate should be allowed. In paragraph 2, the phrase "declaration accompanying its ratification" should be replaced by "legal instrument", which should also be the term used in paragraph 3.

United Republic of Tanzania. The period of maternity leave should be not less than 16 weeks.

Togo. CSTT. Replace "12 weeks" with "16 weeks".

Turkey. TİSK. The right to a minimum of 12 weeks' maternity leave should be protected. Extending this period would create new constraints for ratification.

United Kingdom. CBI. The period of maternity leave should remain at 12 weeks.

United States. This paragraph as presently drafted is supported. However, should the Committee expand coverage of this Convention to adoptive mothers, analogous language would need to be added that would apply to the situation of adoptive mothers. Paragraphs 2 and 3 as presently drafted are supported.

USCIB. Article 3 as proposed is a product of a bygone era when government decided for the woman. Not every woman wants or needs 12 weeks of maternity leave, and the text should give women the right to choose.

Uruguay. PIT-CNT. Sees no improvement in respect of the minimum length of leave, despite the fact that it has been extended in the national legislation of many Members.

Office commentary

Many governments and employers' and workers' organizations commented on this Article. Of the governments which expressed their views regarding the length of maternity leave to be provided, almost half expressed support for a minimum period of 12 weeks. Other governments were almost evenly divided between those which cited shorter periods of leave provided in their national legislation and those which proposed a longer minimum entitlement ranging from 14 to 17 weeks. Comments from employers' organizations stressed that 12 weeks was the maximum acceptable period, with a few noting that even 12 weeks might pose a constraint for some countries. Workers' organizations preferred a minimum of 14 weeks. It is recalled that an amendment to extend the period of maternity leave to not less than 14 weeks was rejected in the first discussion. The Office observes that approximately 80 per cent of ILO member States provide 12 weeks of leave or more, whereas only slightly more than 40 per cent provide 14 weeks or more.[10] In the light of the comments received, the Office has suggested no change regarding the length of leave.

Whether or not the full period of maternity leave was to be provided in the event of a stillbirth or the death of the child was raised by three governments and one workers' organization, with two proposals to reduce the period of leave for such contingencies, one to retain the full entitlement and one to provide leave as long as necessary. The issue of leave in the event of miscarriage was raised by two workers' organizations, which proposed either a full or partial entitlement to leave. In light of the small number of comments and the lack of consensus among them, no change has been suggested in this regard.

Few comments were provided regarding the type of certification required to have access to leave. Concerns regarding the phrase "or other appropriate certification", adopted by amendment in the course of the first discussion, were raised by two governments and an employers' organization, which deemed a medical certificate to be necessary. A workers' organization suggested that the Convention indicate that each member State should specify which authorities might issue such certification. It is noted that the phrase "as determined by national law and practice" leaves these questions to each Member to decide. The Office notes that the reference in this Article to the presumed date of childbirth and the requirement of medical or other appropriate certification would preclude its applicability to adoptive mothers.

In response to the Government of Spain, a declaration submitted in accordance with paragraph 2 stating that a Member provides maternity leave of more that 12 weeks would set that period as the minimum length of maternity leave for that Member. The declarations made in accordance with paragraphs 2 and 3 could not be retracted.

The Office has suggested that in paragraph 1 of this Article and elsewhere the word "confinement" be replaced by the more acceptable term, "childbirth", in the English version.

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[10] Percentages are based on information received from 152 member States. See: *Maternity protection at work*, Report V(1), International Labour Conference, 87th Session, Geneva, 1999, pp. 36-37.

Article 4

1. Maternity leave shall include a period of compulsory leave, the duration and distribution of which shall be determined by each Member after consulting the representative organizations of employers and workers and with due regard to the protection of the health of the mother and the health of the child.

2. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of confinement and the actual date of confinement, without reduction in any compulsory portion of postnatal leave.

3. On the basis of a medical certificate, additional leave shall be provided before or after the maternity leave period in case of illness, complications or risk of complications arising out of pregnancy or confinement. The maximum duration of such leave may be fixed by the competent authority.

Observations on Article 4

Argentina. Agrees to the text of paragraph 2. Confinement after the due date occurs frequently, and could otherwise lead to a reduction in postnatal leave, with the resulting harm that this would cause to mother and child.

UIA. Very detailed provisions concerning the duration and distribution of maternity leave pose problems with regard to ratification in some countries. Paragraph 1 should begin: "Maternity leave may include ...".

Confederation of Education Workers of Argentina (CTERA). The duration of compulsory postnatal leave should be six weeks in order to safeguard the health of the mother and child.

Australia. Leave should be an entitlement which can be accessed at the discretion of the individual employee. Compelling women to take periods of compulsory leave has been determined to be discriminatory in some countries. National law and practice can protect women workers to ensure that decisions about accessing their leave entitlements are made without duress.

Austria. If possible, the entire period of maternity leave should be compulsory. In paragraph 3, "or other appropriate certification" should be added after "a medical certificate".

IV. Paragraph 1 might constitute an obstacle to universal implementation.

BAK. Accepts the proposed wording.

Bahrain. It may be appropriate to stipulate the compulsory maternity leave in Article 3. Dividing the leave period into prenatal and postnatal portions may not suit the woman's needs. Setting an overall period of leave without fixing the duration before confinement gives the woman the right to use all her leave, notwithstanding the number of prenatal days of absence. Furthermore, setting a prenatal period of leave may cause a pregnant working woman to lose part of that leave if her confinement is earlier than expected. To adopt such a method in setting a woman's entitlements to maternity leave may also prompt the woman to leave her work several days before the expected date of confinement in order to use her prenatal leave, although she might otherwise have continued to work. If confinement takes place only after the set number of days for prenatal leave has elapsed, this affects the postnatal period. For the above reason, Bahrain has chosen to provide for comprehensive leave in its legislation. Working conditions should be taken into account in setting the duration of additional leave. The requirement to provide protection for a woman after confinement may also call for granting additional leave which may exceed the limits set by national legislation if her condition warrants it. In such cases, to reduce the burden on the employer, this leave must be without pay. This balances the need to provide the necessary maternity protection with the interests of employers. A distinction must nevertheless be made between such leave and sick leave, as the former is determined by the woman's need for rest after her confinement and does not imply the existence of an illness, while the latter requires a medical certificate. The principle of granting compulsory leave should be set out, while its duration should be left to Members to determine according to their national legislation, in order to avoid any excess in the matter of compulsory provisions.

Barbados. BEC. The inclusion of a period of compulsory leave would be an obstacle to ratification for some countries. Paragraph 1 should begin: "Maternity leave may include ...". Excessive regulation of the duration and distribution of maternity leave poses a problem for a number of countries.

Congress of Trade Unions and Staff Associations of Barbados (CTUSAB). The duration of compulsory leave should be specified as six weeks to ensure the health and well-being of the mother and child.

Belarus. A minimum number of days or weeks of compulsory postnatal leave should be specified.

Belgium. CNT. This provision should be interpreted as indicated by the Office.

Brazil. CNC. Additional leave as proposed in the Convention is different from normal sick leave, as it relates specifically to cases of illness, complications or risk of complications arising out of pregnancy or confinement.

Bulgaria. Paragraph 1 should begin "Maternity leave may include ...".

Canada. Absence of a compulsory leave provides flexibility to the employee in choosing when to take maternity leave. Compulsory leave before birth might prevent women from accessing sick leave or benefits to which they would have been entitled otherwise. To impose compulsory leave on women does not appear to be indispensable to protecting the right to maternity leave, since the proposed Convention provides for protection of women from dismissal or discriminatory measures should they exercise that right. In Canada, because the employee may choose when to start maternity leave, there is no guarantee of postnatal leave in all jurisdictions. However, the choice of the actual period of leave is likely to be driven by the conditions set in legislation for the payment of maternity benefits, which would ensure in most cases a portion of leave following birth. Paragraph 3 is imprecise with respect to the conditions governing the granting of such leave and could overlap with provisions related to sick leave, parental leave or other types of leave.

CEC. Compulsory leave does not appear to be indispensable to protecting the right to maternity leave, as the proposed Convention provides for protection of women from dismissal or discriminatory measures should they exercise that right. In paragraph 1 the term "shall" should be replaced by "should", in which case it would not be necessary to specify the length of the period. This text seems acceptable in so far as the definition of the scope of application does not justify an extensive interpretation of the provision, i.e. does not imply the right to an additional leave. Paragraph 2 cannot be accepted. It is imprecise and too general in nature. Paragraph 3 relating to additional leave is not desirable. Its imprecision regarding the conditions governing the granting of such leave could allow extensions to be granted at any time and overlap with the provisions related to sick leave. The introduction of a provision that would extend maternity leave and, by extension, related job protection, for a period "to be determined" which would then exceed minimum standards, cannot be supported.

Chile. The degree of flexibility in the proposed text, whereby there is no fixed period of postnatal leave, translates to a reduction of rights, and actually leads to considerable rigidity. Maternity leave should include periods prior to and following confinement, allowing a reasonable margin of mobility to extend either the prenatal or the postnatal stage of the leave.

CUT. A compulsory period of six weeks of postnatal leave should be clearly specified. Introducing greater flexibility in the use of prenatal and postnatal leave could seriously weaken the rights of large groups of workers.

Croatia. The minimum duration of compulsory leave should be prescribed. Paragraph 1 should be amended to read as follows: "... the duration and distribution of which shall in no case be less than two weeks before the presumed date of the confinement and eight weeks after the confinement". In paragraph 3, the words "and/or" should replace the word "or" after the word "before". A new paragraph is proposed as follows:

> 4. If an employed woman gives birth to a stillborn child or if the child dies before the expiry of postnatal leave, she shall be entitled to continue the leave for as long as it is necessary, as specified in a medical certificate, for her to recover from giving birth and the psychological condition resulting from the loss of her child.

Czech Republic. Additional leave can be replaced by providing sick leave with sickness benefits, since the health situation described constitutes medical grounds for the beginning of short-term work incapacity.

CMK OS. The duration and distribution of the period of compulsory leave should not be left entirely to Members and consultations with representative organizations of employers and workers. The minimum duration of compulsory pre- and postnatal leave should be determined to be, for example, no less than six weeks.

Denmark. The principle of freely chosen maternity leave should be upheld. Paragraph 1 can, however, be accepted given the requirement for consultation. Paragraph 2 expresses a right principle. In paragraph 3, such leave should only be granted before birth. The right to such leave after the expiry of maternity leave causes uncertainty, even though the duration may be fixed by the competent authorities.

DA. A compulsory leave period is a potential obstacle to ratification. Accordingly, the word "shall" in paragraph 1 should be replaced with the word "may".

Ecuador. Paragraph 3 would require each Member to establish mechanisms for determining additional leave.

Egypt. Agrees.

FEI. Extending maternity leave ex post facto beyond 12 weeks is contrary to national legislation. National legislation does not contradict paragraph 3, though the situation is dealt with differently.

El Salvador. Agrees.

Estonia. Paragraph 3 needs additional explanation concerning the substance and compensation of maternity leave. Supports additional leave on specified grounds.

EATU. Supports additional leave on specified grounds.

Finland. The leave referred to in paragraph 3 is problematic because of its vagueness. Entitlement to such leave also affects enhanced employment security and financial benefits. National enactment of additional leave should therefore take place at the highest possible level. The phrase "by the competent authority" should be replaced by "by national laws and regulations".

KT. "Additional leave" is unnecessary, since it overlaps with normal sick leave. In Finland, additional leave would call for a new concept of leave alongside existing maternity leave, special maternity leave and sick leave and the working out of a related compensation scheme in addition to maternity allowance, special maternity allowance and daily (sickness) allowance.

France. The concept of additional leave is inadequately defined.

MEDEF. National legislation provides for additional prenatal leave of up to two weeks if medical complications arise, but there is no provision for any additional leave in the postnatal period. Health insurance covers treatment for complications which continue after the period of maternity leave. Paragraph 3 as currently drafted and the equivalent treatment of additional leave and maternity leave in Article 5 therefore constitute an obstacle to ratification by France.

CFDT. A minimum of six weeks' compulsory leave should be defined. Additional leave in the event of illness caused by pregnancy should be established.

Germany. Paragraph 1 would not hamper efforts to add a degree of flexibility to maternity leave periods in favour of mothers' availability on the job market. National law conforms to paragraph 2 of the draft Convention. The term "additional leave" in paragraph 3 is misleading since it is not intended to be an extension of basic maternity leave. Replace "additional leave" with "leave of absence".

BDA. Article 4 regulates details of maternity leave which could prove to be obstacles to ratification. It should be transferred to Paragraph 1 of the Recommendation. Such details as are found in paragraph 2 should be left to the member States to settle. Otherwise, paragraph 2 should be restricted to the case of premature births.

DAG. Compulsory leave should be maintained at no less than six weeks to protect the health of mother and child.

DGB. Compulsory leave must be fixed at six weeks.

Greece. Agrees.

National Hellenic Confederation of Trade (NHCT). The phrase "in accordance with national legislation" should be inserted after "medical certificate" in paragraph 3.

Guatemala. Paragraph 1 should specifically fix the duration of compulsory leave at six weeks after confinement, since this is a critical stage in the woman's recovery. This should not be left to Members' discretion. Such leave should be extended to working women who adopt a minor, so that both may benefit from a period of adjustment. The national legislation of many member States provides for this.

Iceland. Paragraph 2 could pose an obstacle to ratification.

India. Agrees to paragraph 3.

Italy. Additional leave should be provided in the event of illness or complications during pregnancy. It should be specified that such leave should be remunerated or compensated.

CGIL, CISL and UIL. Compulsory leave is essential for the health of the mother and child.

Japan. Measures in the case of illness arising out of pregnancy or childbirth should not be limited to leave, but might also include measures such as shorter working hours or lighter duties based on conditions and symptoms. Accordingly, the words "or other appropriate measures shall be taken" should be inserted after "additional leave shall be provided".

JTUC-RENGO. A minimum of six weeks' compulsory leave must be incorporated, It is essential for the health of mother and child. Supports paragraphs 2 and 3.

Republic of Korea. Paragraph 3 should be moved to the Recommendation to encourage member States to implement additional leave when their circumstances permit.

Korea Employers' Federation (KEF). The inclusion of compulsory leave and the extension of maternity leave are not only undesirable, but also detrimental to the goal of promoting ratification. Moreover, these modifications will bring about unnecessary conflicts between labour and management over the period of compulsory leave, the distribution of maternity leave before and after confinement, and the extended period of maternity leave. Paragraph 1 should be changed to read: "Maternity leave may include ...". Paragraph 2 should be deleted.

FKTU. The Convention should provide for a period of compulsory postnatal leave.

Kuwait. Paragraph 2 requires further clarification, or it could be deleted.

Lebanon. Would the extension referred to in paragraph 2 prolong the total period of maternity leave or be subtracted from the non-compulsory portion of the postnatal leave? In paragraph 3, the second sentence should be replaced by "The competent authority shall fix the maximum duration of such leave".

Lithuania. Lithuanian Labour Federation (LLF). Maternity leave should not include a period of compulsory leave.

Malaysia. MTUC. A minimum compulsory leave of eight weeks should be considered. Suggested wording is: "There should be compulsory leave of eight weeks, unless otherwise agreed with representative organizations of workers and employers, for working women after birth."

Malta. Under national legislation, such additional leave is considered to be part of the annual sick leave entitlement of the worker.

Morocco. UMT. Compulsory postnatal leave should not be less than six weeks, except with the agreement of the representative organizations of employers and workers.

Namibia. NPSM. In paragraph 3, "competent authority" should be replaced by "health practitioner".

Netherlands. To protect the health of the mother and child, "compulsory leave" should cover a period immediately prior to and immediately after the confinement. In paragraph 1, after the term "compulsory leave", the phrase "immediately prior to and immediately after the confinement" should be inserted. It is undesirable for there to be a reduction in the non-compulsory part of postnatal leave where the birth takes place later than anticipated. In paragraph 2, the phrase "in any compulsory portion" should be deleted.

VNO-NCW. The inclusion of compulsory leave will be an obstacle to ratification for some countries. When the right to leave and protection from dismissal related to maternity are assured in the Convention, there is no need to introduce a compulsory leave. Paragraph 1 should therefore begin: "Maternity leave may include ...". Does not support the amendments of the Netherlands Government to this Article. These amendments make the text even more prescriptive than it already is.

FNV. Paragraph 1 should be amended, either by adding a period of compulsory leave of six weeks, unless otherwise agreed at national level by governments, employers and workers, or by guaranteeing the freedom of choice for a leave of six weeks after confinement for the woman concerned. Extending compulsory leave to include a prenatal period is supported.

In paragraph 2, a reduction in the non-compulsory part of postnatal leave should not be permitted.

New Zealand. NZEF. The reference to compulsory leave should be omitted. In a number of countries, requiring a period of compulsory leave will be seen as denying women an established right of choice. For those countries, the imposition of a compulsory leave period will be contrary to proper equal opportunity practice which allows the parents themselves to choose who is to be the primary caregiver. Paragraph 3 should be omitted, since "additional leave" is beyond the scope of this Convention. The Convention must, if it is to achieve general ratification, be confined to the provision of maternity protection. It must not introduce matters over and above the guaranteeing of leave for maternity purposes and minimum benefits to ensure that a woman is able to maintain herself and her child.

Norway. The Convention should include a period of compulsory leave of six weeks, but with the possibility of exemption if the mother produces a medical certificate showing that it is better for her to resume work, for example, if the child is stillborn. This exemption is vital for the mother's right of self-determination.

Poland. National legislation does not include the notion of "additional leave" referred to in paragraph 3, but the aim of such leave is met by other means.

Portugal. Paragraph 3 is supported. The Convention enables each State to apply its own health protection scheme in the event of any illness, complications or risks arising from pregnancy or birth. The paragraph simply states that "additional leave" is to be provided, allowing a Member flexibility as to how to provide for that leave under its own system. Additional leave has been treated by some Members as an extension of maternity leave and by others under national provisions relating to sickness, disability or other necessary absences from the workplace.

CIP. Paragraph 2 is rejected. Additional leave is not accepted. Having a worker out of the enterprise, even if it does not directly cause a bigger workload, does inevitably have an impact on the running of the business and may affect productivity.

UGT. The Convention should maintain a minimum period of compulsory leave of not less than six weeks. Paragraph 3 is not supported. No provision is made concerning illness of the child.

Slovakia. In paragraph 1, the period of compulsory maternity leave should be not less than 12 weeks.

South Africa. The second sentence of paragraph 3 should begin with the phrase: "The conditions pertaining to and ...". There may be more than just maximum duration of leave that needs to be fixed by a competent authority.

BSA. Amend paragraph 1 to begin "Maternity leave may include ...". Extending any portion of maternity leave could prove very costly, particularly in poorer countries and smaller businesses. Paragraph 3 is too open-ended and prescriptive and should be deleted.

Spain. CCOO. Add the following text to paragraph 1: "In countries where maternity or parental leave exceeds 16 weeks, it shall not be necessary to specify a compulsory period of leave." The purpose of this paragraph is to reconcile the interests of women in having a compulsory period of leave in countries with less developed economies with the more advanced legislation of other countries, which makes no provision for compulsory leave but does allow men and women to take longer periods of leave if they so wish. Paragraph 2 is supported.

UGT. No objections.

Sri Lanka. Paragraph 3 is supported.

Sweden. The maximum duration of additional leave should be indicated more clearly to ensure predictability of the protection following from such leave. During pregnancy, the woman should always be guaranteed additional leave in the event of illness, complications or the risk of complications due to pregnancy or birth. The maximum duration of such additional leave and the protection which leave implies should be at least six months after confinement. In addition, such leave should be determined by law. The last sentence ought therefore to read as follows: "The maximum duration after confinement of such leave, which may not fall short of six months, may be fixed by national laws and regulations."

SAF. Any indication of duration under paragraph 3 should be left to the competent authority.

Switzerland. See comments on Article 3.

UPS. In paragraph 1, compulsory leave could constitute an obstacle to ratification for certain countries. The term "shall" should be replaced by "may".

USS/SGB. The minimum period of compulsory leave should be six or even eight weeks, since it is absolutely essential to the well-being of mother and child.

FSE/VSA. Many mothers are under severe financial pressure or are worried about losing their employer's goodwill if they claim their entitlement to maternity leave. Paragraph 1, which makes part of the leave compulsory, is therefore welcomed. The Convention should establish a minimum period of compulsory leave. Eight weeks would be desirable.

Syrian Arab Republic. A compulsory period of postnatal leave should be set in line with modern social legislation. Paragraph 3 should be amended to read as follows:

> Leave may be granted before the period of maternity leave or after it on the basis of a medical certificate, in case of illness or complications arising out of pregnancy or confinement. The maximum duration of the leave period and the maternity leave may be set so as not to exceed the period set down in national legislation.

Turkey. TİSK. Paragraph 1 should begin "Maternity leave may include ...".

United States. A woman should be entitled to maternity leave; however, the entitlement to maternity leave should be as flexible as possible to meet the pregnant woman's needs. Maternity leave should not include a fixed compulsory period. The use of the word "compulsory" is troublesome for the United States in that it removes the freedom of choice for a woman to make decisions based upon her particular employment, economic and health circumstances. There are many women who, for various reasons, wish to work as long as possible before confinement and to return to work as soon as they are able. Their reasons are not necessarily based upon economic need, but often are due to their desire to remain active and in the forefront of their job or profession. Indeed, in this context, a compulsory leave requirement could even be viewed as a form of gender discrimination. Decisions to take leave can be suggested by her physician, but determining whether to take leave, when to take the leave, and how long to be on leave are decisions that should ultimately rest with the woman. Concerns that some women will be reluctant to take maternity leave for fear of employer reprisal, including termination, could be better addressed by expanding upon the discrimination provisions set forth in Article 7 of the Convention. These expanded provisions would serve as an alternative means to mandating compulsory leave and would ensure that women are free to exercise their maternity leave. Paragraph 2 should be moved to the Recommendation. It is a worthy goal, but would unnecessarily frustrate the goal of widespread ratification. Paragraph 3 should be moved to the Recommendation.

USCIB. Compulsory leave is anathema in a modern-day society and would be an obstacle to ratification by many countries.

Uruguay. PIT-CNT. Compulsory postnatal leave of at least six weeks is of considerable importance for the health of the worker and her child.

Office commentary

Paragraph 1

The numerous comments received regarding the inclusion of a period of compulsory leave reveal the same differences of views expressed in the course of the first discussion. Those who support inclusion generally do so on health grounds, with some further arguing that the Convention should specify the minimum period of compulsory leave. Those opposed emphasize that such a provision is a potential obstacle to ratification in a number of countries. Other concerns include the fact that compulsory leave might be viewed as discriminatory, since it denies a woman's freedom to exercise her right to take leave as she chooses.

Whereas a slight majority of governments appear to support inclusion of this provision, only about a quarter of them expressed the desire to see the duration and distribution of such leave specified in the Convention. Among the governments opposed to the paragraph, several stated that it was unnecessary. In their view, a strengthening of the employment security and non-discrimination provisions would ensure the woman's right to take needed leave, without restricting her ability to do so in accordance with personal, health and family considerations. Employers' organizations almost all rejected this provision, whereas workers' organizations almost all strongly supported it. Many workers' organizations urged that six or more weeks of compulsory leave be specified in the Convention.

The two principal types of amendments suggested in the responses generally reiterate proposals previously discussed and rejected by the Committee. These relate either to the desirability of specifying in the Convention the minimum period of compulsory leave, with additional proposals regarding possible exceptions, or to rewording the provision to begin "Maternity leave may include ...". The Office recalls that compulsory leave provisions appear in the legislation of a slight majority of the ILO member States from which information was received.[11]

Paragraph 2

Fewer comments were received with regard to paragraph 2 concerning the extension of prenatal leave. A strong majority of governments and all workers' organizations expressed support. One government proposed to strengthen the provision by disallowing reduction of any postnatal leave entitlement, not merely of the compulsory portion of that leave. Employers' organizations generally rejected the paragraph. One government suggested shifting the provision to the Recommendation. It is recalled that in the course of the first discussion this paragraph was shifted from the proposed Recommendation to the proposed Convention and adopted without change after a lengthy debate by the Committee.

In response to the question raised by the Government of Lebanon, the extension of prenatal leave provided in this paragraph would not necessarily result in a lengthening of the total period of maternity leave provided. The provision ensures that the woman would retain the right to any compulsory portion of postnatal leave. However, it leaves open the possibility that a period of leave equivalent to the prenatal extension could be subtracted from any non-compulsory portion of postnatal leave. How this would work in actual practice would depend on the duration and distribution of compulsory leave in each Member.

Paragraph 3

No other provision of the proposed new instruments gave rise to such extensive debate during the first discussion as the paragraph relating to additional leave to be provided before or after maternity leave in the case of illness, complications or risk of complications arising out of pregnancy or confinement. National law and practice vary as to what type of leave is provided in the narrow set of circumstances referred to above. This contingency is met in some member States under provisions relating to sickness or temporary disability, whereas in other Members it may be included under provisions regarding maternity leave. The Office had used the term "additional leave" without prejudice to the question as to whether such leave should be considered as sick leave, maternity leave or some other form of leave. The intention of the Office was to leave this determination to each Member in light of its national law and practice.

It was clearly not the intention of the Office to create some new category of leave, called "additional leave", which might require the establishment of a related benefits scheme or specific mechanisms to determine the granting of such leave. On the contrary, the intention was to allow each Member to provide such leave in the manner it deems most appropriate. In other words, those countries which provide for this contingency under sick leave provisions would continue to be able to do so. Those which provide leave for this contingency in the form of an extension of maternity leave would be free to do so. Those which provide for such a contingency during the prenatal period through an extension of maternity leave and during the postnatal period through sick leave would likewise be able to continue in this manner.

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[11] See: *Maternity protection at work*, Report V(1), op. cit., p. 41.

Problems nonetheless persist with the existence of the term "additional leave". A number of replies cited the vagueness of the term, stating, for example, that no such concept existed in national legislation or that the concept appeared to overlap with sick leave. Several suggestions were put forward to replace the term "additional leave" with terms such as "leave of absence" or "period of leave" or simply "leave". With regard to the final sentence of paragraph 3, several replies suggested that not only should the maximum duration of such leave be fixed by the competent authority, but also other conditions pertaining to it.

To meet these concerns, the Office has suggested a number of changes to Article 4 that are essentially of a drafting nature. Paragraphs 1 and 2, which refer specifically to maternity leave, have been shifted to the end of Article 3, which provides for such leave, and they have been renumbered in consequence.

Paragraph 3 now stands as a separate Article under a new heading, "Leave in case of illness or complications", to clarify the specific contingency for which such leave is provided. This placement also makes it clear that such leave is not a portion of the 12-week leave entitlement provided under Article 3, but is to be provided, in the narrow circumstances cited, before or after the maternity leave period. The term "additional leave" has been replaced with the word "leave". The final sentence now states that the nature and maximum duration of such leave may be specified by the competent authority. The Office observes that, in determining the nature of leave to provide for this contingency, the Member would also be setting the conditions of such leave. Finally, the phrase "on the basis of" has been replaced by "on production of" to align it with the French text.

Several replies called attention to the linkages that exist between the leave provided in former Article 4, paragraph 3, the provision of benefits as in Article 5 and employment security under Article 7. Important concerns were expressed regarding the level of benefits to be provided in the case of such leave. These questions are dealt with more fully in the Office commentary under Articles 5 and 7.

BENEFITS

Article 5

1. Cash and medical benefits shall be provided, in accordance with national laws and regulations or other means referred to in Article 11 below, to women who are absent from work on maternity leave or additional leave.

2. Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.

3. Cash benefits shall be provided either:

(a) at a rate which shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits; or

(b) by means of a flat-rate benefit of an appropriate amount.

4. Where a woman does not meet the conditions to qualify for cash benefits under national laws and regulations or other means referred to in Article 11 below, she shall be entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance.

5. Each Member shall ensure that the conditions to qualify for cash benefits can be satisfied by a large majority of the women to whom this Convention applies.

6. Medical benefits shall include prenatal, confinement and postnatal care, as well as hospitalization care when necessary.

Observations on Article 5

Argentina. UIA. The provisions on levels of benefits in paragraphs 1 and 2 are sufficient. Paragraph 3 should be deleted, since it is too restrictive with regard to social security arrangements in member States. In paragraph 5, the text adopted in June 1999 is preferred. Article 5 should also include the following provision: "In order to protect the position of women in the labour market, in no case shall the employer be individually liable for the cost of such benefits due to women employed by him without his express agreement." This point is of immense importance, not only for employers but also women of childbearing age who wish to work. It would allow employers to decide, through collective agreements and contracts of employment, whether to accept liability for such benefits. Employers would continue to contribute to the financing of maternity benefits through taxes and social security contributions, or through other mechanisms. Not including such a clause would create an obstacle for the employment of women.

CTERA. More precise language is needed in subparagraph 3(b) to ensure that, when the Convention is applied, women wage earners enjoy benefits which guarantee decent living conditions. This is particularly important in light of Article 6. Paragraph 5 as currently drafted is accepted.

Australia. Pregnant women workers should be entitled to protection of their living standards. Such protection may be provided by any or a combination of the following: financial remuneration, medical benefits and other non-pecuniary benefits. Where protection is provided by social insurance, the minimum standards established by Convention No. 103 should be retained. Countries which do not rely on the current social insurance provision of Convention No. 103 would be required to report to the ILO as to how they delivered protection of living standards.

Austria. In subparagraph 3(b), the term "appropriate amount" allows too much latitude. It is not offset by any guarantee, especially for the industrialized countries, that the cash benefits will be linked to wages.

IV. Paragraph 3 in its present form might constitute an obstacle to universal implementation. Paragraph 5 is contrary to the Conference decision to prevent the exclusion of an "unduly large percentage" of women from benefits.

BAK. In subparagraph 3(b), there is no provision that the cash benefits must be linked to wages. The term "appropriate amount" leaves too much latitude. Subparagraph 3(b) should be deleted. Paragraph 5 is accepted.

Bahrain. This Article in all its paragraphs implies that financial benefits mean the woman worker's wages. It would therefore be better to refer to them as such, even though a woman worker's contract is suspended during her leave. Medical benefits are necessary before and after confinement.

Barbados. Paragraph 5 is supported.

Belarus. The flat-rate benefit provided in subparagraph 3(b) should be not less than the benefit provided under (a).

Belgium. Paragraph 5 is acceptable.

Benin. CNP-BENIN. Paragraph 5 as amended by the Office alters the scope. Include the following new paragraph 7: "In order to protect the position of women in the labour market, an employer shall not be personally liable for the direct cost of any maternity benefits to which a worker may be entitled unless the employer expressly agrees to this."

Canada. Add "in accordance with national laws and regulations" at the end of paragraph 2. There is an imbalance between subparagraphs (a) and (b) in paragraph 3. The proposed text does not provide the desired flexibility for countries providing a percentage of earnings, as referred to under (a), while (b) provides flexibility by referring to an "appropriate amount". The general orientation provided under the previous paragraph should be sufficient. The imposition of more specific standards should appear in the Recommendation. Canada would not be in compliance with this Article as it is drafted. Paragraph 5 may present some problems for Canada based on current eligibility criteria for employment insurance coverage, particularly if exclusion based on a minimum length of employment requirement is deemed not to be in compliance. What criteria will establish what constitutes a "large majority"?

CEC. The general orientation provided under paragraph 2 should be sufficient. The imposition of more specific standards should appear in the Recommendation. Paragraph 3 does not provide the desired flexibility. Paragraph 5 is not opposed as long as it applies only to benefits granted. However, the term "large majority" is imprecise. Confusion could be eliminated by deleting the adjective. A second sentence could be added to specify not the minimum nature of the protection, but its progressive nature, introducing the idea that the member States could extend this provision to a larger majority. This proposal would reflect the primary goal of the proposed Convention, which is to obtain the largest number of ratifications through the imposition of minimum standards. It would be important, however, to specify that the basis of assessment for financing maternity leave benefits is neutral. This would assure the principle of equal opportunity for men and women on the labour market. In other words, employers alone should not be responsible for financing these benefits. Maternity leave should be considered a social project that should be espoused by all citizens. The absence of such a provision could be construed as a disincentive to the hiring of women, thus possibly jeopardizing the decades of work that have been devoted to giving women their rightful place in the workplace.

CLC. Paragraph 3 appears to set no real minimum payment for cash benefits. Paragraph 5 is strongly supported.

Croatia. Maternity benefits are an important right that must be regulated by national laws or regulations, rather than by collective agreements or court practice. Therefore in paragraph 1, the phrase "or other means referred to in Article 11 below" should be deleted. In paragraph 3 after the words "provided either", add the phrase "by means of compulsory social insurance or by means of public funds". At the end of subparagraph (b), insert the word "or" and an additional subparagraph which would read: "(c) by a combination of both". In paragraph 4, the phrase "or other means referred to in Article 11 below" should be deleted.

Czech Republic. CMK OS. Add the following sentence to paragraph 4: "Cash benefits shall in no case be less than those provided by the Social Security (Minimum Standards) Convention, 1952 (No. 102), concerning maternity benefit." This addition would ensure that minimum rates of maternity benefit would be respected by Members who ratify this Convention but did not ratify Convention No. 102.

Denmark. Article 5 relates very closely to the maternity leave period and the additional leave. To the extent that the additional leave period will be fixed according to the observations to Article 4(3), paragraphs 1 and 2 of this Article do not cause any difficulties. The wording of paragraph 3 was accepted on the basis of confirmation by the representative of the Legal Adviser that the Office text allowed a combination of both an earnings-based and a flat-rate system. Nonetheless, a provision should be added to paragraph 3 stating that a ceiling may be fixed according to national legislation.

DA. Paragraphs 1 and 2 are sufficient in the instrument. Paragraph 3 would impose tight and unnecessary limits on the individual Member's design of social systems. Furthermore, paragraph 3 is dubious in connection with the proposed Article 6(1). Proposed paragraph 5 involves a change of substance, and results in a much tighter and less flexible rule than the one negotiated at the Conference. Article 4(8) of Convention No. 103 is necessary in a global context. This rule is an important part of women's access to the labour market.

Ecuador. Agrees.

Egypt. Agrees.

Finland. The Convention should include a provision allowing a restriction of the level of the daily maternity allowance to a certain maximum amount. A two-thirds level requirement may lead to a situation where the Convention cannot be ratified, because a certain maximum amount has been set nationally for maternity benefit or because less than two-thirds of the earnings exceeding a certain marginal income are taken into account. Paragraph 3 does not seem to allow such a procedure and should be revised. On the other hand, it seems to allow for certain income to be disregarded altogether when determining the maternity benefit. Paragraph 5 is accepted.

AKAVA, SAK and STTK. Article 5 has been formulated quite freely, allowing in practice full freedom for even a very low compensation level for member States. In Finland, the rate of compensation varies according to income level.

France. Additional leave poses problems for all countries that have a benefit system that distinguishes between sickness coverage and maternity coverage. In view of the current differences in national law between benefit levels under health insurance and benefit levels under maternity insurance, it cannot be guaranteed that benefits provided by health insurance funds will be at the two-thirds level laid down by the Convention. A high level of benefit for maternity leave is justified on health grounds to encourage the pregnant employed woman to stop working for a period of time needed to protect her health and that of her child. However, the grounds for better benefits and the obligation to provide them no longer apply to additional leave, which must be regarded as ordinary sick leave providing entitlement to a rate of benefit applicable to any work stoppage due to accident or illness. Under national legislation, maternity benefits are calculated on the basis of gross pay up to a certain ceiling from which contributions are deducted, thereby guaranteeing more than two-thirds of previous gross earnings when pay is less than or equal to this ceiling. Subparagraph 3(a) does not make it clear whether a system that takes account of earnings only within such a ceiling is in conformity.

MEDEF. The proposed Convention should set minimum standards of protection, not overall social standards. The Convention should leave it to national legislation and practice to set conditions of eligibility for medical and cash benefits and the level and amount of cover provided. Paragraph 3 imposes a financial constraint which is likely to deter many countries from ratifying the Convention. Furthermore, the guaranteed minimum rate is meaningless if the reference wage used is itself subject to a ceiling, as is the case in France. The ambiguity of Article 5 with regard to the possibility of applying a wage ceiling for calculating benefits could constitute an obstacle to ratification by France. The Office's reformulation of paragraph 5 creates an additional constraint by adding the principle of maximum coverage.

CFDT. Provision of cash benefits is essential for one-parent families and is conducive to greater autonomy of women.

Germany. The provisions of Article 5 do not constitute any obstacle to ratification for Germany. The Government emphatically welcomes the fact that there is no provision like that of Article 4, paragraph 8, of Convention No. 103, under which cash benefits relating to maternity leave were on no account to be incumbent upon individual employers. That provision in the 1952 Convention was the most serious obstacle to ratification.

BDA. Article 5 should be restricted to establishing essential principles in connection with financial and medical benefits relating to maternity leave. Paragraph 3 regulates details of financial benefits which should be left to the individual member States. This paragraph should be deleted or moved to Paragraph 2 of the Recommendation. Conversely, Article 5 does not lay down the important principle that financial benefits for maternity leave must on no account be incumbent upon the individual employer. This principle needs to be respected to avoid placing an undue burden on smaller firms in particular and also to prevent discrimination towards women in the job market. Therefore Article 5 should contain a provision which corresponds to Article 4, paragraph 8, of Convention No. 103. Paragraph 5 should be deleted. For many developing countries, this could be an obstacle to ratification.

DAG. Article 5 is inadequate. A minimum level of protection must be established to enable a mother to take maternity leave and support herself, while being shielded from an excessive loss of income.

DGB. There are major defects in Article 5. Minimum cash benefit in the form of a flat-rate benefit of an appropriate amount is left completely undefined for the developed countries. Only for countries with insufficiently developed economies and social security systems is the minimum benefit required to be equivalent to benefits for sickness or temporary disability. A minimum benefit should also be determined for the developed countries. Paragraph 5 is especially significant, as it protects the entitlement to cash benefits for maternity protection for the large majority of women in a country.

Greece. This Article is accepted.

Guatemala. Paragraph 6 should contain wording to ensure that no woman is excluded from medical protection and that women are covered by social security or, in the absence thereof, by social assistance.

Iceland. Paragraph 3 could pose an obstacle to ratification.

India. Agrees.

BMS. There should be flexibility in the level of cash benefits in order to take into account the economic conditions of member States.

Hind Mazdoor Sabha (HMS). Paragraph 5 is accepted. The revision of maternity protection will be meaningless for a large number of women if realistic incomes are not integrated into the Convention. There is also a need to ensure that the cash benefits are sufficient to maintain mother and child. In the informal sector, the minimum wage is so low that it can scarcely support the mother alone. Paragraph 5 is acceptable, in view of the fact that a large number of women in the informal sector are deprived of their right to maternity protection. The government should make efforts to extend benefits to more women. It is wrong to impose a qualifying period, which is often used by the employer to deny maternity benefits to women. Women are dismissed just before the fulfilment of the qualifying period.

Italy. "A flat-rate benefit of an appropriate amount" appears to have limited application by governments.

CGIL, CISL and UIL. No minimum standard has been set. The term "suitable standard of living" is vague and applies to industrialized countries, because Article 6 refers to developing countries and allows a guaranteed minimum no lower than sickness or temporary disability benefit. By deleting from Article 6 the reference to developing countries, the minimum laid down in that Article would apply to all countries. The guarantees of cover are so woefully inadequate that the taking of leave would prove without effect in practice.

Japan. Paragraph 1 provides that benefits to women on maternity leave or additional leave can be prescribed by the laws and regulations of each member State. A guarantee for living and guarantee of medical care should be secured. "Medical benefits" should not be limited to those provided in kind. Those paid in cash should also be included. To avoid misunderstanding and for the purpose of clarity, the term "cash benefits" in paragraphs 1 to 5 should be replaced with other words (e.g. "leave benefits") which signify benefits provided as a guarantee for living. Since a level for cash benefits is prescribed in paragraph 2, it is not necessary to repeat the rate "not less than two-thirds" in paragraph 3. Furthermore, when additional benefits are considered on top of a fixed minimum amount, it is unclear if such benefits correspond to (a) or (b). Paragraph 3 should be amended to read "Leave benefits shall be provided either: (a) at a rate related to the woman's previous earnings or to such of those earnings as are taken into account for the purpose of computing benefits; or (b) by means of an appropriate flat-rate benefit of an appropriate amount or more". Broader options would then be acceptable based on the situation of each member State, and ratification will become easier. In paragraph 5, the word "large" should be deleted. Furthermore, qualifying conditions for cash benefits should be designed and administered by each member State, taking into account its national situation and the institutional mechanism for providing these and other benefits available to the same person. In paragraph 6, since the objective is to guarantee medical care, and the cost of medical care paid by cash is included within medical benefits, the wording "or the cost of such care" should be added following "when necessary".

Japan Federation of Employers' Associations (NIKKEIREN). Paragraph 3 should be deleted, as it fails to take into account the various ways in which countries provide benefits. If deletion is not possible, the amendment proposed by the Government of

Japan is supported. In paragraph 5, the expression "an unduly large percentage of women" is supported.

JTUC-RENGO. Paragraphs 1, 2, 4 and 5 are supported. Regarding paragraph 3, subparagraph (a) is supported, but not (b), because it is unclear. The minimum level (45 per cent) indicated by Convention No. 102 should be secured. Any reference in the Article that would be interpreted as lowering this level should be removed.

Jordan. National legislation does not provide cash benefits other than paid maternity leave. Medical care is obtained through employer-provided health insurance.

Republic of Korea. In paragraph 4, change the phrase "she shall be entitled to" to "she may be entitled to" in consideration of the countries which have not established social assistance funds for women who do not meet the conditions to qualify for cash benefits. The coverage of women workers eligible for cash benefits should be in accordance with the stage of social and economic development of the nation concerned. Cash benefits need to be balanced with other social security programmes. Coverage should first include women who are in desperate need of social protection and later be expanded in an appropriate manner to other categories of women workers. Therefore, the Government supports the former wording "do not result in excluding an unduly large percentage of" in paragraph 5.

KEF. In countries with insufficient social welfare systems, enterprises often pay the cost of maternity leave. This discourages the employment of women, as enterprises carry a double burden: the absence of female workers and the payment of their wages during the absence. The employer may pay for an appropriate portion of maternity benefit according to each country's situation. However, it is undesirable to place the cost of maternity benefits solely on the shoulders of employers. In this regard, Article 4, paragraph 8, of Convention No. 103 should be maintained as paragraph 5(7) of the proposed Convention.

FKTU. Cash and medical benefits should be provided either through compulsory social insurance or through public funds.

Lebanon. The question is raised as to whether cash benefits replace the normal wages of a woman or whether they are paid in addition to her normal wages. Cash benefits should be equivalent to two-thirds of the average daily wages of a woman computed on the basis of total earnings, which include income arising from work and cover all components and additions. The reference to social assistance funds in paragraph 4 may require including an Article prescribing the establishment of such funds. The following phrase should be added at the end of paragraph 4: "National legislation shall determine the mechanism for benefiting from such funds." The proposed wording of paragraph 5 raises two questions: Are the conditions to qualify for cash benefits not the same for all women to whom the Convention applies? In what cases are these conditions different? Paragraph 5 should be reworded as follows: "National legislation shall define the conditions to qualify for cash benefits for women to whom this Convention applies."

Malaysia. MEF. Paragraph 2 should be deleted as the cash benefits are already defined in paragraph 3. The reference in paragraph 2 to a benefit "which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living" will lead to argument and disagreement with the social partners.

MTUC. Maternity benefits, including full payment of medical expenses (for normal birth), should be given by employers as part and parcel of work incentives in appreciation of the contributions and commitment of working women in public and private sector employment. Subparagraph 3(b) on benefits should be improved to provide better income security for women on leave.

Morocco. Some national social protection systems do not provide for any social assistance scheme which would finance benefits for women who do not meet the conditions under national legislation to qualify for cash benefits. The absence of such schemes could constitute an obstacle to ratification. To remedy this, in paragraph 4 after the phrase "social assistance funds", insert "subject to the conditions required for such benefits and provided that such funds exist".

Namibia. NPSM. Paragraph 3 should read: "Cash benefits shall be provided at the full rate of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits."

Netherlands. The Government observes that paragraphs 4 and 5 relate only to "cash benefits", and wonders whether there may have been an omission. The first paragraph refers to both "cash and medical benefits". Women who cannot by right lay claim to services as far as benefits and medical care (benefits in kind) are concerned should be able to call on the resources available from social assistance. For this reason, the word "cash" should be dropped from paragraphs 4 and 5. Paragraph 5 is accepted. New paragraph 7: States are increasingly requiring those who are insured to make a personal contribution to the costs of their medical care. Cost-sharing implies that part of the cost is borne by the insured person, but rules out the full burden of costs being borne by the persons protected. A new paragraph 7 should be added as follows: "Where a Member's laws or regulations require the woman to share in the cost of medical care, the rules governing such cost-sharing shall be such as do not impose hardship or render medical and social protection less effective." Although the proposed paragraph permits the levying of a personal contribution, it also limits this contribution: the financial burden must not impose hardship and so risk detracting from the effectiveness of medical and social protection.

VNO-NCW. The following new paragraph should be introduced: "In order to protect the position of women in the labour market, an employer shall not be individually liable for the direct cost of any monetary maternity benefit to a women employed by him or her without that employer's specific agreement." Paragraph 2 defines the level of cash benefits for women on maternity leave or additional leave. Paragraph 3 only restricts the possibilities of meeting the minimum standard and should be deleted. The new paragraph on cost-sharing proposed by the Netherlands Government is supported.

FNV. The word "cash" should be deleted from paragraphs 4 and 5. Paragraph 5 is supported. The proposal of the Netherlands Government with regard to cost-sharing is strongly rejected. Cost-sharing would represent a weakening of international minimum standards. In 1996, the High Court for Social Security *(Centrale Raad van Beroep)* judged that the provision of cost-sharing during hospitalization for confinement (which existed up to 1996) was not in accordance with ILO Conventions Nos. 102 and 103 and therefore unlawful. The same opinion was expressed by the ILO Committee of Experts in 1990.

New Zealand. NZEF. This Article prescribes the form and level of payment of cash benefits required during maternity leave. These are not the only ways, and may not be the means best suited to national circumstances for providing benefits. The Article does not currently recognize, as it should, that many countries may opt to give financial aid through social assistance alone. Moreover, employers should not be liable for the cost of any benefit. Government compliance costs already weigh heavily upon employers. For that reason, the new Convention should incorporate the spirit of Article 4, paragraph 8, of Convention No. 103. The following wording should be included in Article 5: "In order to protect the position of women in the labour market, an employer should not be individually liable for the direct cost of any monetary maternity benefit to a woman employed by him or her, without that employer's specific agreement." Without such a provision, employers could be held individually responsible for the direct payment of maternity benefits, inevitably to the detriment of women's labour market participation. The reference in paragraph 1 to "additional leave" should be omitted. The words "cash and medical" should also be omitted to enable countries to provide benefits in the way which suits them best and best reflects their economic situation. Specifying the kinds of benefits to be provided will again see fewer countries in a position to ratify. In paragraph 2, the word "cash" should be omitted. Paragraph 3 should be deleted since its subject-matter is covered by paragraphs 1 and 2. The paragraph refers to "cash" benefits where, for example, benefits could be provided in the form of a tax rebate. It is extremely prescriptive as to the level of benefit to be provided, while at the same time subparagraph 3(b) appears to leave this issue open. The paragraph therefore creates a degree of confusion that is far from helpful. Omitting it would allow countries to determine for themselves how benefits can best be provided within available limits. In paragraph 5, the Convention should not attempt to identify a numerical quota of any kind in relation to qualification for cash benefits. However, if some such reference is retained, the words "unduly large percentage of the women" should be retained. The Office reformulation represents a considerable change of meaning. It would undoubtedly preclude ratification by countries which opt for income provision by way of welfare support to ensure that women whose need is greatest can receive the help they require. The change is far too prescriptive. Imposing a strict definition on eligibility for cash benefits – as on the nature of benefits, that is, cash or non-cash – will undoubtedly compromise the ability of countries to ratify.

Norway. The question is raised whether setting an upper limit to cash benefits would run counter to the Convention.

Confederation of Trade Unions in Norway (LO). The term "a flat rate of an appropriate amount" should be linked to a national standard on the same scale as, for instance, the daily unemployment benefit.

Poland. NSZZ "Solidarność". Paragraph 2, without appropriate sanctions for the Members, seems a dead letter. Economic problems of the Members may become a basic obstacle, limiting the financial resources designated for maternity benefits.

Portugal. It is appropriate to have rules on the minimum content of benefits as already established in Convention No. 103. Paragraph 5 is accepted.

CIP. The reference to additional leave in paragraph 1 should be deleted. The Convention should not establish levels or minimum rates for benefits. This is a matter which must be left to Members.

Confederation of Farmers of Portugal (CAP). Current paragraph 5 is no improvement on the earlier version. The Article should be in the Recommendation.

UGT. Cash benefits must be equal to the full amount of the woman's previous earnings or of those earnings that are taken into account for the purpose of computing benefits. The benefits payable for additional leave under the health protection scheme of each Member must not be lower than those payable for maternity leave: in other words, the rate or amount payable for sickness benefits must be increased if maternity leave benefits are higher.

Qatar. Paragraph 4 is supported in principle, but in practice it is difficult to apply. Social assistance is subject to laws and regulations which relate generally to whether beneficiaries have income or not. One other difficulty relates to the quantity of assistance and how to determine it. It may be best to leave such matters to social insurance schemes. Nonetheless, the proposed text is not opposed. Laws generally seek to have as wide an application as possible; therefore qualifying conditions should be such that they apply to the vast majority of women concerned. Paragraph 5 is acceptable.

Russian Federation. Paragraph 5 is supported. It highlights the need to ensure that the majority of women to whom the Convention applies are entitled to cash benefits, whereas the previous version focused essentially on possible exclusions from benefits.

Singapore. The cost of maternity benefits is borne by employers directly. Hence, the increase in maternity benefits would inevitably increase the cost burden on the employers and this may work against the interest of female employees, as employers may be discouraged from employing them. In addition to maternity leave protection, the Government also provides various tax and financial incentives for working women. Working couples are allowed to claim annual child relief, and the Government grants parents a tax rebate on the birth of each of their second, third and fourth children. The tax rebate can be claimed over a period of nine years after each child's birth to offset the parents' tax liabilities.

Slovakia. In subparagraph 3(a), delete "or of such of those earnings as are taken into account for the purpose of computing benefits".

South Africa. Paragraph 5 is accepted, but consideration could be given to a more elegant formulation.

BSA. The whole of Article 5 is too prescriptive and does not take account of the differences between and in countries. Paragraphs 1 and 2 cover the levels of benefits sufficiently. Paragraph 3 is superfluous and far too prescriptive. It should be deleted. Paragraph 4 seems unrealistic. Paragraph 5 is not accepted. The previous version is preferred. Regarding paragraph 6, the available medical care in some poor countries and regions will make it impossible to give effect to this provision. The following paragraph should be included in the text to protect employers from being forced to pay maternity benefits and to assist in non-discrimination against women of childbearing age who wish to enter the labour market: "In order to protect the position of women in the labour market, an employer shall not be individually liable for the direct cost of any monetary benefit to a woman employed by him or her without that employer's specific agreement."

Spain. CCOO. Paragraph 5 is accepted. In paragraph 6, insert "by qualified or adequately trained staff" after "postnatal care". This would allow care to be given by midwives or male obstetric assistants without formal qualifications, if they have an adequate level of practical training.

Sweden. The cash benefit under Swedish law corresponds in principle to 80 per cent of previous earnings up to a certain ceiling. In the case of a parent who has had insufficient income or none at all, the cash benefit is paid at a guaranteed level. The Government assumes that this structure of benefits is not at variance with the proposed Convention.

Switzerland. Swiss law is in conformity with paragraph 1 concerning the principle of providing cash benefits, but the requirement is limited in time, and the cash benefits provided are not always sufficient to maintain the woman and her child. National legislation concerning medical benefits is compatible with the Convention. The optional nature of daily cash benefits and the method by which the amount of cash benefits is set are not compatible with paragraphs 2, 3 and 5. Swiss law concerning social assistance is compatible with paragraph 4. Paragraph 6 is compatible with national legislation.

UPS. Paragraphs 1 and 2 define sufficiently the margins within which the benefits could be defined. Paragraph 3 is too binding and should be deleted. Paragraph 5 is rejected. The first formulation is preferable. Regarding paragraph 6, the problem of medical care should not be confused with labour issues. Medical benefits are regulated very differently by member States. The following new paragraph should be added: "In order to protect the situation of women in the labour market, an employer shall not be individually liable for the direct cost of any cash maternity benefit due to a woman employed by him without his specific consent." The aim of this amendment is to ensure that employers will not be individually liable for the direct payment of maternity benefits. It is for them to decide if they agree to undertake such a commitment by way of collective or other agreements.

USS/SGB. The text does not specify a minimum level of cash benefits, and the Convention thus fails to provide the safeguard which must complement the entitlement to leave. We would like to see concrete proposals for improvement. Paragraph 5 must be retained.

Syrian Arab Republic. There are no legal texts in the Syrian Arab Republic that provide that a working mother on maternity or sick leave from her work shall be paid cash benefits because of pregnancy or birth.

Togo. CSTT. Paragraph 2 should be amended to read: "Cash benefits shall be set and paid at a level equal to the woman's previous earnings." Paragraph 3 should be deleted and, in consequence, the phrase "referred to in Article 5, paragraph 3, above" should be deleted from Article 10.

Tunisia. Paragraph 5 is accepted.

Turkey. TİSK. Paragraphs 1 and 2 contain sufficient definitions regarding cash benefit levels. Paragraph 3, which aims to determine an obligatory payment of a least two-thirds of earnings, is unnecessary and rigid. It should be deleted. This Article should contain a provision on the non-obligation of the employer to bear the costs of maternity cash benefits, provided that there is no such provision in labour contracts or collective agreements. This would eliminate the risk of pregnant women losing their jobs in the labour market.

Confederation of Turkish Trade Unions (TÜRK-İS). In paragraph 4, delete the phrase "subject to the means test required for such assistance".

United Kingdom. Paragraph 3: During the first discussion, the representative of the Legal Adviser confirmed that arrangements for the provision of cash benefits as set out in paragraph 3 could permit a combination of both an earnings-based and a flat-rate system (*Provisional Record* No. 20, paragraph 226). Consideration might be given to adding a new subparagraph (c) to paragraph 3 to put the matter beyond doubt within the Convention. The new subparagraph might read: "or (c) a combination of an earnings-related and a flat-rate system". There is remaining concern that there is no indication in (b) as to what might constitute "an appropriate amount". During the Committee's first discussion, the United Kingdom Government sought to introduce an amendment requiring the level of cash benefit to be no less than that which would be received in the case of sickness, an approach consistent with that of EU Council Directive 92/85/EEC. Although the amendment found favour in some quarters, it was withdrawn owing to lack of support.

Article 6(1) provides that a country with an insufficiently developed economy and social security system can be in compliance with Article 5(3) if cash benefits are provided at a rate no lower than that payable for sickness or temporary disability. This could imply that, for countries with a developed economy and social security system, "an appropriate amount" would be higher than that payable for sickness or temporary disability, a fact supported by the requirement in Article 6(2) that countries that avail themselves of the linkage with sickness benefits in 6(1) should take measures to progressively raise the level of benefit. On the other hand, it is likely that in a country with a developed economy and social security system, a rate of benefit set at the level payable for sickness or temporary disability could be "an appropriate amount" because of the higher rate of benefits generally in these areas. Some clarification on what would constitute "an appropriate amount" under paragraph 3 in relation to sickness or temporary disability benefits is required. Paragraph 5 has been improved. It reinforces the expectation that most employed women should receive cash benefits within the terms of the Convention.

CBI. Paragraph 3 is inappropriately prescriptive. The affordability of cash benefits will vary considerably from country to country. Paragraphs 1 and 2 should suffice. The original wording of paragraph 5 is more likely to encourage ratification.

United States. Article 5 is difficult to support. The provision of cash and medical benefits should be encouraged, but the Convention should accommodate differences in national law and practice. Article 4(4) of Convention No. 103 ensured that, in order for a woman on maternity leave to receive cash and medical benefits, she was required to "comply" with all "prescribed conditions". The current revision should also include this eligibility principle. Therefore, the wording of paragraph 1 should refer explicitly to benefits "for which a woman is eligible". The level of benefits, as well as the eligibility criteria for receiving benefits, should be set by national law and practice. Paragraph 3 should be moved to the Recommendation or amended to read: "Cash benefits shall be provided in accordance with national law and practice." Clarification is requested as to whether paragraph 4, as currently drafted, would require a country to create a benefit provided solely on the basis of pregnancy. If it does contain such a requirement, its purpose would be better served if it were placed in the Recommendation. Not all Members' economic, political, or legal systems provide for social assistance funds to be provided solely on the basis of maternity. Paragraph 6 is supported.

USCIB. Paragraph 3 does not take into account the variety of ways in which benefits are provided today. It should be deleted. The Office revision of paragraph 5 provides a further obstacle to ratification.

Uruguay. PIT-CNT. Cash benefits should not consist of a flat-rate sum of an "appropriate amount" unrelated to the salary of the worker. Removing the provision stipulating that "in no case shall the employer be individually liable for the cost of the cash benefits" will have a negative impact on women's opportunities to gain access to the labour market.

Venezuela. Confederation of Autonomous Trade Unions (CODESA). Paragraph 5 is supported.

Office commentary

Fundamental differences continue to mark the views of constituents with regard to what, if any, minimum level of benefits should be set within the Convention. Major reservations were expressed with regard to some provisions of this Article, in particular paragraph 3. Only three governments and two workers' organizations supported the Article in its entirety as currently drafted.

Paragraphs 1 and 2

Paragraphs 1 and 2 were widely accepted. They were seen to embody important principles, i.e. that a woman on leave should be provided with cash and medical benefits and that the cash benefits should be at a level sufficient to maintain herself and her child in proper conditions of health and with a suitable standard of living. The Office notes that the cash benefits referred to in this Article are not provided in addition to normal wages, but are intended to replace, wholly or partly, earnings which might be suspended during the leave period. One government proposed that throughout the Article, the term "cash benefits" be replaced by "leave benefits". An employers' organization proposed to delete the phrase "cash and medical" from paragraph 1, which would remove the reference to the specific types of benefits to be provided.

Some concern was expressed with regard to the question of eligibility requirements. One government proposed the insertion in paragraph 1 of the phrase "for which a woman is eligible" after the word "benefits" to make explicit the possibility of eligibility requirements being applicable to the provision of cash and medical benefits. Another government suggested adding "in accordance with national laws and regulations" at the end of paragraph 2, where it would refer only to cash benefits. It is the view of the Office that the possibility for a Member to establish eligibility requirements for cash and medical benefits under paragraph 1 is implicit in the phrase "in accordance with national laws and regulations or other means ...". Qualifying conditions are referred to further in paragraphs 4 and 5. Indeed, the purpose of paragraph 5 is to ensure that such qualifying conditions as may be set are not overly exclusionary. The Office also notes that the reference to national laws and regulations found in paragraph 1 applies to cash and medical benefits throughout the Article. The addition of a further reference to national law and regulations in only one other paragraph might imply their non-application elsewhere in the Article. One government proposed deleting the phrase "or other means referred to in Article 11 below" to ensure that maternity benefits are regulated by national laws or regulations. The Office observes that the intention of that phrase is to provide Members with maximum flexibility to take their national circumstances into account when applying the Convention. In view of the general support for paragraphs 1 and 2 as currently drafted, the Office has not suggested any amendment to the text as proposed.

Paragraph 3

Much debate during the first discussion and many of the comments received concerning Article 5 focused on the question of how best to address the level of benefits to be provided. Specific amendments proposed in the replies often echoed those put forward during the first discussion and subsequently withdrawn or rejected by the Committee. Some replies expressed the view that the level of benefits was sufficiently defined in paragraph 2 and that a reference in the Convention to any specific rate would be overly prescriptive. A large number of employers' organizations suggested deleting paragraph 3 or shifting it to the Recommendation, a proposal supported by only two governments and no workers' organizations.

The great majority of comments concerned problems with the current wording of paragraph 3, rather than with the principle of including specific guidance regarding the level of benefits. One reply noted the imbalance or lack of symmetry between subparagraphs (a) and (b), and stated that subparagraph (a) provided insufficient flexibility and (b) set no clear minimum criterion.

Subparagraph (a), which provides for a level of benefits based on earnings, was seen as problematic by several governments, as it seemed not to allow for the possibility of a ceiling for benefits. Two governments questioned whether an upper limit for benefits would be allowable under the current drafting of paragraph 3. Other governments proposed amending the paragraph to ensure that Members had the right to set ceilings. In the view of the Office, the possibility for a Member to set an upper limit for benefits is implicit in the phrase "or of such of those earnings as are taken into account for the purpose of computing benefits". The two-thirds replacement rate would have to be met only for the portion of earnings thus taken into account. Members might wish to consider the potential importance of this phrase in light of the proposal put forward to delete it. The impact of subparagraph (a) on countries which operate graduated tier systems for the determination of benefits would depend on the replacement rates established for each income group or tier. As expressed in subparagraph (a), the two-thirds replacement rate would have to be met for women in all income groups, but only with regard to that portion of earnings taken into account for the purpose of computing benefits. One employers' organization observed that a guaranteed minimum percentage rate is meaningless if the reference wage is itself subject to a ceiling.

Regarding subparagraph (b), a number of replies criticized the vagueness of the phrase "of an appropriate amount". Workers' organizations were almost unanimous in insisting that some minimum level of benefits be specified in the Convention and were particularly critical of subparagraph (b), which was seen to permit very low income replacement levels. It was suggested in one reply that the flat rate provided for in subparagraph (b) should be linked to some national standard, such as the daily unemployment benefit. It was recalled in another reply that a proposal during the first discussion to link subparagraph (b) to sickness benefits was not supported by the Committee. The Government of the United Kingdom requested clarification on the meaning of "an appropriate amount" in relation to benefits payable for sickness or temporary disability. In the view of the Office, the phrase "of an appropriate amount" takes as its point of reference the principle of adequacy expressed in paragraph 2 in the phrase "a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living". In determining the flat-rate benefit payable under subparagraph (b), a Member might refer to other national compensation standards currently in use, such as benefits payable for sickness or temporary disability or unemployment, but in all cases the flat-rate benefit would have to be of a sufficient level to meet the requirement under paragraph 2.

The inclusion of a new subparagraph (c) was proposed in several replies. One suggested text would read: "or (c) a combination of both". The other would read: " or (c) a combination of an earnings-related and a flat-rate system". It would appear that the intention of both proposals would be to allow the combination of methods for the calculation of benefits, but the effects of the two proposals are clearly different. The first proposal would allow a Member to provide benefits comprised partly of a flat-rate payment and partly of an income-related component, with the two-thirds rate applicable to that portion which was income-related. New subparagraph (c) in the second proposal, i.e. for "a combination of an earnings-related and a flat-rate system", would allow a Member to establish a benefit scheme which combined a flat-rate benefit with an earnings-related component without reference to the two-thirds replacement rate which is provided in subparagraph (a).

An important consideration was raised regarding the possible differences in benefit levels for the two types of leave referred to in paragraph 1. Several employers' organizations suggested deleting the reference to "additional leave" in that paragraph, the effect of which would be to provide the right to leave in the case of illness, complications or risk of complications arising out of pregnancy or confinement, but no rights under the Convention to cash or medical benefits. Such a proposal was rejected by the Committee during the first discussion. It is recalled that the determination of the type of leave to be provided under Article 4, paragraph 3, would be left to the discretion of each Member. The Office notes that in determining the type of leave to provide for the contingency, the Member would determine the applicable payment system and benefit levels as well.

Further considerations regarding the minimum standard for cash benefits arose in relation to Article 6 and are examined thoroughly there.

It is clear in the light of the concerns raised in the replies that the wording of paragraph 3 was unsatisfactory. The Office has therefore drafted an alternative proposal which replaces paragraph 3 with two new paragraphs based on the principal concerns expressed in the replies.

The two new proposed paragraphs concern benefit levels with respect to the leave referred to in Article 3. The first would cover payment systems in which cash benefits are based on a woman's previous earnings and are expressed as a percentage of those earnings or of the portion taken into account for the purpose of computing benefits. The text retains the benefit level of two-thirds previously set in subparagraph (a). The Office notes that in 132 of the 150 countries for which information on benefit levels is available, cash benefits are expressed as a percentage of earnings. In only 25 of these are benefits paid at a rate of less than two-thirds.[12]

The second new proposed paragraph would cover payment systems which apply other methods than a simple percentage of earnings to determine the level of cash benefits. These would include, but not be limited to, flat-rate systems and systems which combine a flat-rate and an earnings-related component, for example. Under such systems, the level of cash benefits is either independent of or less closely tied to the individual woman's earnings. It may be calculated on the basis of earnings of a standard beneficiary or determined according to a prescribed scale according to income group, for example. New paragraph 4 would provide that the amount of such benefits shall be comparable on average to the benefits payable if the two-thirds rate had been applied to all protected persons. The intention is to ensure equivalent protection despite differences in payment systems.

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[12] In four other countries, benefit rates vary from a minimum payment of 50 per cent of earnings to a maximum replacement rate of 80 to 100 per cent.

Paragraph 4

Paragraph 4 received relatively few comments. While support was expressed regarding the principle of social assistance for women who fail to qualify for cash benefits, a number of practical problems were raised with regard to actual implementation of this provision. It was pointed out that in some countries, social assistance funds would have to be established, and doubt was expressed that all countries would be in a position to provide such benefits. One government proposed adding the sentence "National legislation shall determine the mechanism for benefiting from such funds". The Office is unclear about the meaning of "mechanism", but observes that this proposal would impose a requirement to legislate at the national level. It would also appear that the proposal might limit the flexibility of Members in implementing this provision, as it implies that all such social assistance funds would be subject to government control. One government and one workers' organization proposed to delete the word "cash". The effect of this amendment would be to widen the possible range of benefits to be provided through social assistance to include, for example, medical care and other benefits in kind. A workers' organization suggested the deletion of the phrase "subject to the means test required for such assistance", a change which would require the payment of benefits through social assistance to all women who failed to meet the qualifying conditions for cash benefits. Another workers' organization suggested the addition of the sentence "cash benefits shall in no case be less than those provided by the Social Security (Minimum Standards) Convention, 1952 (No. 102), concerning maternity benefit" to ensure that the minimum rates set out therein would be respected by Members who had not ratified Convention No. 102. A government proposed deleting the phrase "or other means referred to in Article 11 below" to align the text with an amendment it had proposed for paragraph 1. As there was no evidence of wide support for these proposals, the Office has not suggested any change in the text. However, for the purpose of a logical progression, the Office has shifted the position of the paragraph concerning social assistance to follow the paragraph which specifies that Members must ensure that the conditions to qualify for cash benefits can be satisfied by a large majority of the women to whom the Convention applies.

The Government of the United States requested clarification as to whether paragraph 4 would require a country to create a benefit provided solely on the basis of pregnancy. In the view of the Office, the intention of paragraph 4 is to ensure that employed women who do not meet the eligibility requirements established by a Member for the payment of benefits do receive cash benefits through social assistance. As the paragraph is currently drafted, such a benefit need not be created solely for women on maternity leave or the leave referred to in Article 4, paragraph 3. However, adequate benefits would have to be provided to any woman covered by the Convention who was ineligible for cash benefits as provided under paragraph 1 while on maternity leave or the leave referred to in Article 4, paragraph 3, whose economic situation, as evaluated through a means test, would allow her to qualify for social assistance. If a Member's social assistance benefit scheme were not applicable to such women, a Member would be required to make any necessary changes to ensure compliance with this paragraph.

Paragraph 5

The reformulation of paragraph 5 proposed in the Office text was accepted by a strong majority of the governments that commented and was endorsed by all workers' organizations. Almost all employers' organizations rejected the wording, but one proposed deleting the word "large" and possibly including a second sentence denoting the progressive nature of the provision and introducing the idea that protection could be extended to a larger majority. The Government of Canada requested clarification regarding the criteria to be used to establish what constitutes a large majority, particularly in light of the view expressed by the Office that an exclusion based on a minimum length of employment requirement would be inappropriate under Article 2, paragraph 2. The Office notes in this regard that "a large majority" should be viewed in light of the objective of the instrument, which is its application to all employed women. The Government of Lebanon raised two questions with regard to this paragraph: first, are the conditions to qualify for cash benefits not the same for all women to whom the Convention applies? Second, if not, in what cases are these conditions different? The Office notes that not all countries have uniform qualifying conditions applicable to employees in all sectors. In many countries, benefit schemes and the attendant qualifying conditions are structured differently for public sector and private sector employees, for example. A proposal was put forward by one government to reword this provision to read: "National legislation shall define the conditions to qualify for cash benefits for women to whom this Convention applies." It is recalled that the right to define qualifying conditions for both cash and medical benefits is recognized in paragraph 1 in the phrase "in accordance with national laws and regulations or other means referred to in Article 11 below". The effect of the proposed amendment would be to limit the means by which a Member might define qualifying conditions to national legislation only. Indeed, it would make national legislation mandatory. Moreover, the Office notes that the intended purpose of this paragraph is to ensure that qualifying conditions are not overly exclusionary. That notion is lost in the proposed amendment. One government proposed the deletion of the word "cash", referring in its comments to the fact that paragraph 1 provides for both cash and medical benefits.

Paragraph 6

Few comments were received with regard to paragraph 6, implying general acceptance of the provision. Three governments expressed their agreement with the text. One government proposed to add wording similar to that in paragraph 4 to ensure that no woman is excluded from medical benefits, whether provided through social security or through social assistance. The Office recalls that the earlier proposal to delete the word "cash" from paragraph 4 would appear to have the same effect. Another government proposed adding the phrase "or the cost of such care". The Office notes that under the current wording medical benefits would not be limited to benefits in kind. One employers' organization cited this paragraph as a possible obstacle to ratification, noting that available medical care in poor countries would make it impossible to give effect to this provision. Another stated that medical issues should not be confused with labour issues. One workers' organization suggested inserting the phrase "by qualified or adequately trained staff", wording similar to a proposed amendment which was withdrawn due to lack of support in the course of the first discussion. The Office has made a minor drafting change to the French version of the text, changing "soins durant l'accouchement" to "soins liés à l'accouchement.". In the English version, the word "confinement" has been changed to "childbirth" as in Articles 3 and 4.

New paragraphs

One government proposed that a new paragraph be added to Article 5 which would permit the levying of a personal contribution to the cost of medical care, while at the same time limiting the contribution to avoid financial hardship which might detract from the effectiveness of medical and social protection. The proposed amendment would read as follows: "Where a Member's law or regulations require the woman to share in the cost of medical care, the rules governing such cost-sharing shall be such as do not impose hardship or render medical and social protection less effective." Such an amendment was proposed and withdrawn in the course of the first discussion.

A large number of employers' organizations expressed their conviction that the new Convention should contain a provision similar in spirit to that of Article 4, paragraph 8, of Convention No. 103, which precludes the individual liability of employers for the cost of benefits due to women employed by them. Liability for the cost of benefits was seen as an undue burden on employers, especially in small firms. Roughly half of those supporting the inclusion of a new provision proposed the following wording: "In order to protect the position of women in the labour market, an employer should not be individually liable for the direct cost of any monetary maternity benefit to a woman employed by him or her, without that employer's specific agreement." It is recalled that an identical amendment was rejected by the Committee in the course of the first discussion.

The extensive changes to this Article have been suggested in light of the comments received from governments and employers' and workers' organizations on the key issues related to benefits. It is hoped that the proposed text will provide a suitable basis for further discussion by the Committee. An important challenge for the coming deliberations will be to find wording which can accommodate as far as possible the diverse concerns expressed regarding the provision of benefits and which will meet with acceptance by the tripartite constituency.

Article 6

1. A Member whose economy and social security system are insufficiently developed shall be deemed to be in compliance with Article 5, paragraph 3, above if cash benefits are provided at a rate no lower than a rate payable for sickness or temporary disability in accordance with national laws and regulations or other means referred to in Article 11 below.

2. A Member which avails itself of the possibilities afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, explain the reasons therefore and indicate the rate at which cash benefits are provided. In its subsequent reports, the Member shall describe the measures taken with a view to progressively raising the rate of benefits.

Observations on Article 6

Argentina. UIA. In paragraph 1, the phrase "whose economy and social security system are insufficiently developed" should be deleted, since it would establish different minimum standards in different countries, which would be inappropriate.

Bahrain. There is no need to examine the question of rate levels, as these are set according to regulations and legislation.

Barbados. This Article establishes selective criteria and dual standards, with separate minimum standards for certain countries, implying that developed systems should be subject to higher standards.

Canada. CEC. By adopting this type of provision, the Convention would lose its original vocation, namely, to unite all member States with respect to a set of common minimum standards.

Chile. CUT. Supports the text of this Article.

Denmark. If this Article is to be maintained in the Convention, the text has to be reformulated in accordance with the wishes of the Members at which the provision aims.

DA. Paragraph 1 raises doubt in relation to the interpretation of Article 5, paragraph 3, on the possibility of meeting the minimum level of benefits of the Convention by having a "flat-rate" system. Paragraph 1 may be interpreted to mean that only those countries which are insufficiently developed may use this "floor". It is unnecessarily inflexible and unacceptable. There is no reason for this exception, which allows several standards in the Convention for less developed systems and which explicitly sets higher standards for the so-called developed systems. The words "whose economy and social security system are insufficiently developed" should be deleted.

AC, FTF and LO. Members who are not able to meet the provisions of Article 5 and who have no provisions on benefits in the event of sickness will have no minimum benefits for women during maternity leave. This is unacceptable in an ILO Convention. The precondition for a woman being able to enjoy her right to maternity leave is that she has the right to reasonable financial benefits during maternity leave. A minimum level should be laid down or the entire text should be omitted.

Ecuador. Agrees.

Egypt. Agrees.

El Salvador. The provisions seem to be in keeping with the spirit of the proposed Convention.

Germany. BDA. This provision should be deleted altogether or incorporated into Paragraph 2 of the Recommendation.

Greece. Agrees.

India. Agrees.

Italy. The link between maternity benefits and sickness benefits could serve as a reference parameter for all countries and not just developing ones.

CGIL, CISL and UIL. Delete the reference to developing countries.

Japan. JTUC-RENGO. Supports this Article.

Republic of Korea. KEF. Applying different standards to certain countries would mean higher standards for other countries. The phrase "whose economy and social security system are insufficiently developed" should be deleted from paragraph 1.

Lebanon. What is the status of Members providing cash benefits lower than the rate payable for sickness or temporary disability?

Morocco. UMT. Should be deleted, as it is likely to give rise to ambiguities and hence deny protection to the very women it is intended to protect.

Namibia. NPSM. Replace "shall be deemed to be in compliance with Article 5, paragraph 3, above if cash benefits are provided" with "shall provide cash benefits".

Netherlands. The combination of Articles 5(3) and 6(1) will have a strange effect: the so-called "developing" countries will be bound to a particular floor or minimum in relation to benefits ("a rate payable for sickness or temporary disability"), while the so-called "developed" countries are not faced with a particular floor. Article 5, paragraph 2, is too vaguely formulated for the latter, and no specific minimum can be derived from it. Article 6, paragraph 1, should be made applicable to all member States.

VNO-NCW. Delete the words "whose economy and social security system are insufficiently developed". The Convention should fix minimum standards for all countries and not dual standards.

New Zealand. NZEF. Delete "whose economy and social security system are insufficiently developed" so that there is no suggestion that dual criteria can be developed. The Convention should set minimum standards applicable to every ratifying country.

Portugal. CIP. Unacceptable for the same reasons as given under Article 5.

South Africa. BSA. This text seems to establish differing minimum standards for different countries. International labour standards should set universal minimum standards. This text should either be amended to reflect this position or deleted.

Switzerland. UPS. Paragraph 1 establishes criteria for differentiation and creates a double standard. The Convention should confine itself to establishing minimum standards. The phrase "whose economy and social security system are insufficiently developed" should be deleted.

United Kingdom. Article 6(2): Although the final sentence of the paragraph implies that member States should raise the rate of benefits to those required under Article 5, paragraph 3, it could be read to mean continuous improvement beyond those levels.

CBI. Paragraph 1 seeks to exempt from the provisions of Article 5(3) countries "whose economy and social security system are insufficiently developed". Conventions should enable global minimum standards – this is the ILO's key role. This text proposes something else altogether – different standards for different countries – and must be reconsidered.

United States. USCIB. Distinctions with respect to maternity protection should not be made based on level of economic development. The words "whose economy and social security system are insufficiently developed" should be deleted so that the Convention's provisions will be uniformly applicable to all nations.

Office commentary

Whereas a number of governments and two workers' organizations expressed support for Article 6, critical comments focused on the question of whether the minimum standards regarding the rate of benefits should be different for developing and developed countries. As one government noted, the proposed Article establishes selective criteria and dual standards, implying that developed systems should be subject to higher standards. Several comments noted that paragraph 1 bound developing countries to a particular rate or floor, whereas no such floor was specified in Article 5, paragraph 3, as previously drafted. One government noted that the reporting requirements in paragraph 2 could possibly be interpreted as obliging Members which availed themselves of Article 6 to engage in continuous improvement even beyond the levels required under Article 5, although this was not the intention.

Fundamental objections were raised to the setting of dual standards by two governments, one workers' organization and all employers' organizations which replied, with some urging that there be agreement on a universally applicable minimum standard. A number of responses proposed deleting the phrase "whose economy and social security system are insufficiently developed" from paragraph 1. The effect of such an amendment would be to set common reference parameters for all Members without distinction. If such an amendment were to be adopted, it would obviate the need for paragraph 2, which might then be deleted. It would not, however, make sense to retain such a provision as a separate Article 6, since all other provisions regarding minimum levels of cash benefits are found in Article 5.

The debate as to whether minimum standards might be different for developing and developed countries is not a new one. The ILO Constitution provides in article 19, paragraph 3, that standards should be framed with due regard to differences in conditions and levels of development among Members. Extensive discussions in the 1970s and 1980s on the possible need for flexibility to take account of such variations revealed agreement on a number of principles.[13] These included the principle that while international labour standards should continue to be adopted on a universal basis, they should be drawn up in a spirit of realism and effectiveness, so as to respond to the needs of all Members. Due account should be taken of differences in conditions and levels of development with a view to enabling the greatest number of States progressively to ensure the intended protection. It was generally felt that there should be no flexibility in Conventions dealing with fundamental human rights and freedoms, and that standards aimed at protecting workers' life and health should likewise be universally applicable. Nonetheless, interpretation of these principles gives rise to widely divergent views, as witnessed in the comments received with respect to Article 6. The Office notes at least four Conventions which contain similarly worded provisions[14] and another which allows for exceptions on a similar basis, although expressed in different wording.[15]

The Government of Lebanon queried the status of Members which provided cash maternity benefits at a lower rate than those payable for sickness or temporary disability. Whether or not such countries would be deemed to be in compliance with the new Convention as currently drafted would depend on three principal factors: the level of benefits actually provided; the level of benefits, if any, set within Article 5; and the level of benefits for sickness or temporary disability payable according to national law and practice. If the Member whose economy and social security system were insufficiently developed provided benefits at or above the level set within Article 5, new paragraphs 3 and 4, there would be no need for it to avail itself of the possibility offered within Article 6. If, on the other hand, the Member provided benefits at a lower rate than those set within Article 5, compliance under Article 6 would depend on whether the level of benefits paid for maternity was at least as high as the level payable for sickness or temporary disability in accordance with national laws and regulations. Article 6 would provide some margin of flexibility for Members which do provide maternity cash benefits at or above the level set for sickness or temporary disability benefits, but below the level, if any, set within Article 5, new paragraphs 3 and 4. However, Members which provide a higher rate of benefit for sickness or temporary disability than that provided in Article 5 for maternity leave would find no relief under Article 6. Of the 150 countries for which information on benefit levels is available, the Office has identified only 11 countries for which Article 6 could potentially provide relief. In seven other countries, information is not available regarding the level of payment set for "paid sick leave", but in five of those, the rate set for temporary disability is two-thirds of earnings or above. Without further information regarding sick pay, it is not possible for the Office to determine the potential usefulness of this provision for them. It should be noted that a Member which makes no provision for benefits for sickness or temporary disability could not avail itself of Article 6.

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[13] See doc. GB.228/4/2 (Nov. 1984), paras. 2, 24 and 25; and the report of the Working Party on International Labour Standards, *Official Bulletin*, Vol. LXX, 1987, Series A, Special Issue, paras. 6 and 7.

[14] Conventions Nos. 102, 121, 130 and 138.

[15] Convention No. 168.

It should be stressed that Article 6 could provide flexibility only with respect to the methods of calculation referred to in paragraphs 3 and 4 of Article 5 ("A member ... shall be deemed to be in compliance with Article 5, paragraphs 3 and 4, ..."). It would not affect the basic principle in paragraph 2 that "cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living". Whether or not flexibility over and above that already inherent in paragraphs 3 and 4 should be offered to the Members referred to and, if so, whether or not Article 6 would in practice provide meaningful relief, will be up to the Conference to consider. In view of the difference in views and paucity of information, the Office has not suggested any substantive amendment for Article 6.

EMPLOYMENT PROTECTION AND NON-DISCRIMINATION

Article 7

It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on maternity leave or additional leave or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or childbirth and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.

Observations on Article 7

Argentina. UIA. The purpose of the proposed Convention is to protect women from the beginning of pregnancy until the end of maternity leave, and the proposed text goes beyond this. The UIA suggests the following wording: "It should be unlawful for an employer to terminate the employment of a woman during her pregnancy and maternity leave, except on grounds unrelated to the pregnancy or childbirth, in accordance with national law and practice."

CTERA. Articles 7 and 8 represent an advance with respect to Convention No. 103 and must be included. They relate to the principles embodied in the Convention on the Elimination of All Forms of Discrimination against Women, and should be adopted by the Conference.

Australia. Women are entitled to equality before the law and the equal protection of the law in the enjoyment of the right to work. Discrimination on grounds of pregnancy, childbirth and lactation should be prohibited. This principle should be applied in selection for employment, during the course of employment, and in termination of employment. If the ultimate goal of the new instruments is to protect pregnant women from discrimination, then the non-discrimination provisions should immediately follow the provisions dealing with definitions and scope.

Austria. The reasons for which employment may be terminated should be defined more precisely and a procedure for termination specified or at least recommended.

IV. This text might constitute an obstacle to universal implementation.

BAK. The proposed wording does not meet the criterion of protection if it leaves too much latitude for States to allow exemptions. This Article should clearly state appropriate criteria for determining the period following the woman's return to work during which she is protected against dismissal and should indicate clearly that the entire nursing period should be protected.

Barbados. BEC. The objective should be to protect women from the beginning of pregnancy to the end of the period of maternity leave. The present text goes beyond a minimum framework and most existing national law and practice. Article 7 should be replaced as follows: "It should be unlawful for an employer to terminate the employment of a woman throughout the duration of her pregnancy and maternity leave, except on grounds unrelated to her pregnancy or confinement, in accordance with national law and practice."

CTUSAB. This text is crucial and reflects a great improvement over Convention No. 103.

Benin. CNP-BENIN. As currently worded, this text goes too far beyond the minimum framework. It should be unlawful for an employer "to terminate the employment of a woman during pregnancy or absence on maternity leave, except on grounds unrelated to pregnancy or childbirth, in accordance with national legislation and practice".

Brazil. CNC. This text prevents unjustified dismissal of pregnant or nursing women, and reduces the number of legal disputes regarding such dismissals.

Bulgaria. Should be retained.

Canada. If the purpose of this text is to ensure that women have appropriate recourse, there should be more flexibility.

CEC. Although the text suggests that the "period following her return to work" be determined by the member State, this attempt to increase flexibility fails to clarify the provision and the diverse nature of possible situations. Since national legislation refers to clearly identified situations of "prohibited dismissal", the applications of such provisions would be greatly reduced. These remedies are exceptional ones; the proposed text is not in keeping with this perspective given its broad scope. The flexibility included in the provision does not compensate for this shortcoming, as it increases the number of avenues for special recourse and makes the final outcome of a justified dismissal more uncertain. The CEC cannot support such a provision.

CLC. Articles 7 and 8 are a great improvement over Convention No. 103. Continued support for these Articles from a large number of governments will be extremely important.

Chile. CUT. Supports the text.

Denmark. This text is very extensive. The protection period is vague. Besides the pregnancy period and the maternity leave period, it covers additional leave and a period following the return to work, including nursing breaks. Only the pregnancy and maternity leave periods should be covered.

DA. This text is very problematic in the light of national legislation and EU law. It should either be deleted or be changed radically. Such a provision requires a very well-functioning legal system as well as a finely meshed set of enforcement instruments able to determine the scope and limitations of such a provision very precisely, so that it may not impair women's access to the labour market. The "reversed burden of proof" may seem obstructive to ratification by EU Member States. The proposed scope of the protection is quite unacceptable, with regard both to the compulsory protection period following the return to work and to the references to "childbirth and its consequences or nursing", which create an enormous uncertainty.

AC and FTF. The present wording is supported.

Ecuador. Agrees.

Egypt. Agrees.

El Salvador. Articles 7 and 8 provide a guarantee of stability in employment and legal protection against discrimination, in accordance with Convention No. 111.

Finland. During the period following her return to work, the woman no longer has the same need for intensified protection against unilateral termination as during pregnancy, maternity leave or additional leave. This greater right given to one employee group may discriminate against others. The protection should not put some group in a position that differs to such a degree from that of other groups that it may, in practice, lead to a situation where other persons are being employed rather than those belonging to the more protected group. The reference to the "period following her return to work" should be deleted.

State Employer's Office (VTML). This Article is unnecessary.

France. In the proposed text, the words "and its consequences" and the reference to nursing introduce uncertainties, which reduce the clarity of the protection mechanism without really increasing its scope. These provisions need to be clarified by citing only pregnancy and childbirth as grounds for dismissal. The provision on reversal of burden of proof is not acceptable and should be discussed again.

MEDEF. The provision which places the burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth on the employer is not acceptable. It is tantamount to an assumption that a dismissal is discriminatory. An arbitrator should be allowed to form an opinion on the basis of the evidence submitted by the parties involved. It is therefore essential that Article 7 refer to national law and practice. Supports the amendment to the effect that "it should be unlawful to terminate the employment of a woman throughout the duration of her pregnancy and maternity leave, except on grounds unrelated to her pregnancy or confinement, in accordance with national law and practice".

CFDT. The duration of protection for nursing mothers should be defined in the light of the practices and customs of individual countries.

Germany. The obligation on the employer under national legislation to justify an application for dismissals and to give the worker a hearing, together with the subsequent need for a discretionary decision from the authority, would appear to be in line with the protective aim of the burden of proof rule in Article 7 of the Convention.

BDA. Should be restricted to covering the principle of employment protection during pregnancy and maternity leave. The proposal to extend employment protection to additional leave or to a period following return to work goes far beyond this and should be omitted. The provision regarding the burden of proof resting on the employer should also be deleted, as this is a huge intrusion into the specific procedures of individual States.

DAG. Articles 7 and 8 represent a major improvement in the Convention and are warmly welcomed. It must be made clear that protection against dismissal also applies to the nursing period.

DGB. Articles 7 and 8 on employment protection and non-discrimination are an improvement and must remain in this form. The reversal of the burden of proof protects women from unfair dismissal. The inclusion of the nursing period in the period to which protection against dismissal applies is supported.

Greece. Agrees.

Guatemala. A second paragraph should be added as follows: "A woman shall be entitled to return to her former position or an equivalent position paid at the same rate at the end of her maternity leave." This effectively guarantees respect for maternity protection at work and is therefore essential.

Iceland. Provision regarding the burden of proof could pose an obstacle to ratification.

India. Agrees.

HMS. For this provision to be really effective, there should be no qualifying period before a woman can take maternity leave.

Italy. Agrees.

CGIL, CISL and UIL. There remains some confusion concerning protection against dismissal during the nursing period and the lack of precise definition in the text. The texts represent one of the most important gains over Convention No. 103 and call for strong and resolute support from the greatest number of member governments.

Japan. The period of employment protection should be stated as "during a period of compulsory leave before and after childbirth and during a period after returning to work to be prescribed by national laws or regulations". Provisions on dismissals related to leave beyond the limited period mentioned above, such as additional leave, should only be included in the Recommendation. Regarding the burden of proof, it is not appropriate that the employer should automatically bear all responsibility. Furthermore, the provision does not conform in principle to Article 9, paragraph 2, of the Termination of Employment Convention, 1982 (No. 158), and should not be set out in an ILO instrument on maternity protection. The last sentence should therefore be deleted.

NIKKEIREN. Supports the following amendment: "It should be unlawful for an employer to terminate the employment of a woman throughout the duration of her pregnancy and maternity leave, except on grounds unrelated to her pregnancy or confinement, in accordance with national law and practice." If that wording is not accepted, the opinion of the Government is supported. The sentence regarding burden of proof should be deleted. If that is not possible, the wording should be made similar to that of Article 9 of Convention No. 158.

JTUC-RENGO. Supports this text.

Republic of Korea. KEF. Covering dismissal after a woman's return to work after maternity leave goes beyond the proper area of the Convention. It is undesirable to place the burden of proving that dismissal was made for reasons unrelated to pregnancy or childbirth on employers. Enterprises carry out employment adjustment at appropriate times on the basis of corporate demands, regardless of periods of maternity leave, and would have difficulties if female workers or trade unions insisted that unfair dismissal had been made even when the companies carried out employment adjustment according to rational and fair standards. The phrase "or during a period following her return to work" and the last sentence of Article 7 should be deleted.

Lebanon. The following phrase should be added after the word "nursing" in the fifth line: "and other cases specified by national legislation". The words "or others" should be added to the end of this Article.

Malaysia. There should be a provision on restriction of dismissal of a female employee after the expiration of the leave period as a result of illness certified by a registered medical practitioner to arise out of her pregnancy and confinement, until the absence exceeds a period of 90 days after the expiration of the leave period.

Namibia. NPSM. Delete the text following "by national laws or regulations".

Netherlands. VNO-NCW. The objective of the new Convention should be to protect women from the beginning of pregnancy to the end of maternity leave. The following wording is proposed: "It shall be unlawful for an employer to terminate the employment of a woman throughout the duration of the pregnancy and maternity leave, except on grounds unrelated to her pregnancy or confinement, in accordance with national law and practice."

New Zealand. NZEF. The period following a woman's return to work should not be covered and there should be no reference to "nursing". The Convention should confine itself to protecting employment in the period before the birth and during maternity leave. Also, the burden of proof that dismissal was not related to pregnancy or childbirth should not fall on the employer, as jurisdictions relating to burden of proof vary. The current text should therefore be replaced with the following: "It should be unlawful for an employer to terminate the employment of a woman throughout the duration of her pregnancy and maternity leave, except on grounds unrelated to her pregnancy or confinement, in accordance with national law and practice."

Norway. The first sentence should stop after "additional leave". The phrase "or during a period following her return to work to be prescribed by national laws or regulations" might cause an obstacle to Norway's ratifying the Convention.

Portugal. Agrees.

CIP. It is improper to include a provision enshrining the principle that dismissal is prohibited, as this must be left to Members.

Qatar. An alternative wording is proposed: "It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on maternity leave or additional leave or during a period following her return to work to be prescribed by national laws or regulations, or to terminate her employment on grounds of childbirth and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to any of the above cases shall rest on the employer."

Russian Federation. Could agree to the inclusion of a special provision to protect women from dismissal after returning to work for a period which should be not less than the nursing period. Feeding is a natural extension of pregnancy and childbirth, and breastfeeding is one of the most important ways of protecting the health of the woman and child.

South Africa. Proposes replacing the first sentence as follows: "It shall be unlawful for an employer to terminate the employment during any period of absence related to pregnancy or childbirth and its consequences, including maternity leave, additional leave and nursing breaks."

BSA. The reference to "additional leave or during a period following her return to work" is totally out of place in a Convention that is aimed at providing minimum standards to protect women during pregnancy and until the end of maternity leave. BSA supports the following amendment: "It should be unlawful for an employer to terminate the employment of a woman throughout the duration of her pregnancy and maternity leave, except on grounds unrelated to pregnancy or confinement, in accordance with national law and practice."

Spain. As it is clear that women cannot be dismissed or discriminated against for the reasons stated in the text, it would be more appropriate to provide that dismissing a woman on grounds relating to pregnancy, childbirth and its consequences, and nursing is prohibited, and that the burden of proving that these grounds were not the cause of the dismissal shall rest on the employer. The opposite approach, trying to specify all the possible cases in which these grounds can apply, could lead to the paradox of discriminating against other women and also men, and putting pregnant workers in a better position just because they are pregnant, which would distort the effect of the Convention. The countries of the European Union would find it difficult to adhere to, given that EU regulations and the jurisprudence of its Court of Justice do not allow it.

UGT. Protection against dismissal should also cover the nursing period.

Sweden. The period during which this protection is to apply should be foreseeable by the parties concerned and should thus be indicated and determined by national legislation or regulations. Wider job security after the conclusion of leave may constitute an impediment to ratification by Sweden. It is proposed that the first sentence of Article 7 be worded as follows: "It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy, absence on maternity leave or additional leave, except on grounds unrelated to the pregnancy or childbirth and its consequences or nursing."

Switzerland. Fully endorses the final sentence of this Article.

UPS. The objective should be to protect women between the beginning of pregnancy and the end of maternity leave. The proposed text deviates too far from the minimum framework that would be sufficient, and is too detailed, particularly for an international instrument. The last sentence concerning the burden of proof is excessively legalistic. This Article should be replaced as follows: "It should be unlawful for an employer to terminate the employment of a woman throughout the duration of her pregnancy and maternity leave, except on grounds unrelated to her pregnancy or confinement, in accordance with national law and practice."

USS/SGB. Articles 7 and 8 regarding employment protection and non-discrimination constitute a significant addition to the current version of the Convention. These provisions should be included unchanged in the final text.

FSE/VSA. Welcomes Articles 7 and 8 concerning employment protection and non-discrimination, which constitute a necessary extension of the protection provided.

Togo. CSTT. Add "which cannot be less than six months" after "national laws or regulations".

Turkey. TİSK. The objective of the new Convention should be to protect women from the beginning of pregnancy to the end of the period of maternity leave. To supplement this period with periods of additional leave and periods which continue even after resuming work is unnecessary and creates difficulties. Therefore, it would be better to define the period during which the contract cannot be terminated as "during the period of pregnancy and maternity leave".

United Kingdom. If the current wording precludes a system whereby a prima facie case must be made before the transfer of the burden of proof, the Article should be amended to allow such an approach.

CBI. This Article seeks to extend unacceptably the scope of this protection to "a period following her return to work". Procedures concerning claims of unfair dismissal should not form part of a Convention on maternity protection.

United States. The last sentence of this Article should be deleted or rephrased to avoid unnecessary difficulties caused by differences among Members' legal systems and the terminology they employ. It is important that women should not be faced with an overly burdensome task of establishing illegal conduct by an employer, but a procedure requiring a woman to first produce enough evidence to allow a fact-finder to infer illegal termination on the grounds of discrimination, including pregnancy, childbirth or pregnancy-related medical conditions, does not unfairly prevent women from defending their right to freedom from discrimination.

USCIB. The purpose of this Convention should be to protect women from the beginning of pregnancy to the end of maternity leave, and not for an unspecified time following return to work. The current text should be replaced with the following: "It should be unlawful for an employer to terminate the employment of a woman throughout the duration of her pregnancy and maternity leave, except on grounds unrelated to her pregnancy or confinement, in accordance with national law and practice."

Uruguay. PIT-CNT. Dismissal is considered to be justified on grounds unrelated to pregnancy, childbirth or nursing, which considerably restricts the protection granted. Reversing the burden of proof in respect of the grounds for dismissal does not seem a sufficient guarantee against the improper use of this provision by employers.

Office commentary

While there was broad agreement on the principle that a woman should be protected from dismissal on grounds related to pregnancy and childbirth, there was considerable divergence concerning the period of protection and the burden of proof to establish if dismissal is related to maternity. In relation to the period of protection, employers and a few governments considered that protection should not extend into the period following the woman's return to work. It was pointed out that following her return to work, the woman no longer has the same need for special protection as compared to other groups of workers; this would discriminate against other workers and could in turn impair women's access to the labour market. Some respondents would also favour eliminating periods of additional leave from the period of special protection against dismissal. It might be noted, in this regard, that additional leave may be provided in different ways in member States, whether as sick leave or as another form of leave, but according to the current text, the woman's employment would have to be protected during that period, regardless of the statutory basis for the leave. On the other hand, a few respondents proposed extending the period of protection against dismissal for the nursing period or for periods of sickness related to maternity following the expiry of leave. In this context, they emphasized the importance of continuing protection for the duration of the nursing period as a means of protecting the child's health and ensuring women's social protection. A workers' organization suggested that a period of at least six months should be specified following the woman's return to work.

There was also some disagreement concerning the grounds on which it would be permissible to terminate the employment of a woman. One government suggested that the approach should be turned around, by specifying the grounds on which a woman's employment could be terminated during the relevant period. Another government proposed to greatly extend the protection against dismissal, through an amendment that would prevent the dismissal of a woman during pregnancy, absence on maternity leave or additional leave or during a period following her return to work, *or* on the grounds of childbirth and its consequences or nursing. This would have the effect of eliminating any restriction on the period of protection. Several responses considered that the references to the consequences of childbirth and to nursing reduced the clarity and increased the complexity of the provision without greatly improving the protection offered. They therefore proposed referring only to pregnancy and childbirth as prohibited grounds for dismissal. Many employers' organizations recalled the amendment that had been submitted by the Government of France during the first discussion, to the effect that "it shall be unlawful to terminate the employment of a woman throughout the duration of her pregnancy and maternity leave, except on grounds unrelated to pregnancy or childbirth, in accordance with national law and practice". This, they considered, would resolve their difficulties concerning both the period of protection and the grounds for dismissal. In view of the fact that a greater number of respondents supported the proposed text, the Office has not suggested any change to the Article in this respect.

With regard to the issue of the burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing, most workers' organizations and many governments expressed support for the current text. One pointed out that it would reduce the incidence of disputes over unjustified dismissals, although two workers' organizations considered that the protection provided did not go far enough. On the other hand, a few governments, as well as the employer respondents, considered that the text offered insufficient flexibility to allow for different national systems. One pointed to the risks of impairing women's access to the labour market. Several suggested that the burden of proof should not necessarily rest solely with either the employer or the worker. Another possibility, consistent with practice in the United States and the European Union, would be to specify that the worker should first have to produce evidence to support a preliminary conclusion that dismissal could be maternity-related, before then putting the responsibility on the employer to demonstrate otherwise. The Office points out that the EU's Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex is much wider in scope than Article 7, since it deals with any complaints of direct or indirect discrimination based on sex. Article 7, on the other hand, concerns only the very specific situation of termination of employment, and only the case of discrimination based on pregnancy or childbirth and its consequences or nursing. In the view of the Office, this Article as currently drafted would not dispense the employed woman from first providing evidence of her pregnancy and of the termination of her employment, if these were in dispute. Moreover, the burden of proof might be relatively easy to discharge if notice of termination was given at a time when the employer did not have reason to know about the pregnancy. It should be noted that the provision as proposed is consistent with one of the approaches provided for under Article 9, paragraph 2, subparagraph (a), of the Termination of Employment Convention, 1982 (No. 158), as a means of ensuring that a worker does not bear alone the burden of proving that termination of employment was unjustified.

An issue was also raised concerning the action required to implement Article 7, as compared with the relevant Council Directive 92/85/EEC of the EU. In the Office's view, Article 7, which provides that "it shall be unlawful ...", has a similar effect to the provision in the Directive specifying that "Member States shall take the necessary measures to prohibit ..." termination of employment for reasons related to maternity.

The Office made a number of drafting changes. As a result of the amendments introduced to Articles 1, 3 and 4, the reference to "absence on maternity leave or additional leave" was changed to "absence on leave referred to in Article 3 or 4". Some other drafting changes were made to align the French and English texts.

Article 8

1. Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment.

2. Measures referred to in the preceding paragraph shall include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment, except for work which under national laws or regulations is prohibited or restricted for pregnant or nursing women or which is prejudicial to the health of the woman and child.

Observations on Article 8

Argentina. Discriminatory hiring on the basis of potential or actual pregnancy can lead to practices that interfere with the private lives of women workers, as is the case of the requirement for a pregnancy test for a woman applying for employment. This Article should be included in the Convention.

Barbados. CTUSAB. This Article is crucial and reflects a great improvement over Convention No. 103.

Brazil. CNC. Paragraph 2 is appropriately included. Although such discrimination may already be prohibited under Convention No. 111, it should be clearly stipulated in this Convention.

Canada. CEC. This is an accepted principle in Canada.

Chile. CUT. Supports this Article.

Ecuador. Agrees.

Egypt. Agrees.

Finland. The concept of discrimination based on gender should be interpreted logically in all situations (recruitment, dismissal, termination of an employment relationship in other ways). In the legal praxis of the European Community, refusal to employ a pregnant woman is comparable with the dismissal of a pregnant employee. From the aspect of the discrimination concept, refusal to employ a pregnant jobseeker has to be judged on the same grounds as terminating an employment relationship on the grounds of pregnancy. With regard to the exception in paragraph 2, strict restrictions must be set for national legislation. The provision must under no circumstances be a gateway to the testing of all female jobseekers. In paragraph 2, the phrase "or which is prejudicial to the health of the woman and child" is vague as to the kind of hazardous work referred to and where it is regulated.

France. Accepts.

Germany. In paragraph 2, the phrase beginning "except for work" should be deleted. Any question or test aimed at establishing pregnancy – including the provision in paragraph 2 admitting pregnancy tests in the case of recruitment for work which is prohibited or deemed prejudicial to health by health and safety regulations – infringes the principle of non-discrimination between men and women. This derives from the judgment of the European Court of Justice interpreting Directive 76/207/EEC.[16] A provision of this sort might also possibly conflict with Convention No. 111.

Greece. Paragraph 1 should also refer to discrimination in access to employment.

India. Agrees.
HMS. Supports.

Italy. Agrees.
CGIL, CISL and UIL. This text represents one of the most important gains over Convention No. 103. The strong and resolute support from the greatest number of governments is urged.

Japan. JTUC-RENGO. Supports.

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[16] Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Norway. No regulation in Norway prohibits the requirement of a pregnancy test. This will cause an obstacle to Norway's ratifying the Convention.

Portugal. Agrees.

CIP. The adoption of measures to ensure non-discrimination in employment is something which should be regulated by Members. Any reference in the Convention is therefore rejected.

South Africa. The formulation in paragraph 1 is weak. It could be reformulated: "It shall be unlawful to discriminate against a woman, including as an applicant for a job, on the grounds of her pregnancy, including an intention to fall pregnant." In paragraph 2, the end of the sentence should be reformulated as follows: "except for work which is prejudicial to the health of the woman and child". There could be instances where national law and regulation unfairly prohibit certain work for pregnant or nursing women as a result of cultural traditions and other prejudices. A possible next paragraph could read: "National laws and regulations should prohibit or restrict work which is prejudicial to the health of a pregnant woman and child."

Sweden. Sweden has no statutory prohibition from requiring a test for pregnancy when a woman applies for employment. A rule of this kind could constitute an impediment to ratification by Sweden. On the other hand, there are rules whereby an employer who refuses to hire a woman because she has not undergone a pregnancy test is guilty of discrimination and can be held liable for damages.

Switzerland. Paragraph 2 should be retained in the Convention. Under Swiss law, the ban on testing for pregnancy when a woman applies for a position is implicit in the provisions concerning the protection of privacy. Such a ban does not apply to work which may not be done by pregnant women (modelling, dancing, activities that could adversely affect the normal course of the pregnancy, etc.).

Tunisia. Paragraph 2 should be transferred to the Recommendation, since it relates to practical aspects of implementing the principle of non-discrimination. The measures provided for in paragraph 2 are not intended to be exhaustive, so the words "among others" should be inserted after "include".

United States. Paragraphs 1 and 2 are supported.

Office commentary

Rather few comments were received on Article 8, which provides for appropriate measures to be adopted to ensure that maternity does not constitute a source of discrimination in employment. A number of governments suggested strengthening the provision by including an explicit reference to access to employment in paragraph 1. In the view of the Office, discrimination in employment includes discrimination in access to employment and it would normally be unnecessary to specify this. However, the effect of Article 2, paragraph 1, of the Convention, which provides that the Convention "applies to all employed women" could be that women who are not employed would be excluded from the protection afforded under Article 8. If this interpretation were followed, women who were already employed somewhere would be protected from discrimination in relation to their application for another job, whereas women who were unemployed would not have the same protection. This was clearly not intended. Indeed, paragraph 2, which concerns the measures referred to in paragraph 1, specifically addresses problems of access to employment. To make it clear that the intention in Article 8 had been to cover both employed and unemployed women in relation to their access to employment, the Office suggests the addition at the end of paragraph 1 of the words ", including – notwithstanding Article 2, paragraph 1 – access to employment".

The issue of prohibiting pregnancy testing, which is one of the measures that would be required under paragraph 2 to give effect to the principle set out in paragraph 1, was of concern to a few governments. They saw it as a matter of detail that should be taken up in the Recommendation rather than the Convention, where it could inhibit ratification. It is recalled that paragraph 2 resulted from an amendment accepted in the course of the first discussion which moved this provision from the Recommendation to the Convention.

One government asserted that pregnancy testing in any situation – including in the case of recruitment for work which is prohibited or considered prejudicial to the health of the woman and child – infringed the principle of non-discrimination between men and women and might conflict with Convention No. 111. In the view of the Office, pregnancy testing would not automatically in itself be considered to be discriminatory, within the meaning of Convention No. 111. The Occupational Health Services Recommendation, 1985 (No. 171), as well as the ILO's *Technical and ethical guidelines for workers' health surveillance* and code of practice on protection of workers' personal data,[17] all provide guidance on the conditions under which workers' medical personal data might be collected and restrictions on the use that might be made of such data, although none of these refers specifically to pregnancy testing. It should be noted that the current text of Article 8 would simply permit, but would not require, exceptions to be made permitting pregnancy testing on grounds of safety and health.

Some governments sought to restrict the exceptions provided for under paragraph 2, defining circumstances in which pregnancy testing might be permitted. One pointed out that the phrase "or which is prejudicial to the health of the woman and child" could give rise to difficulties of interpretation, including in relation to the way in which this would be determined. Another was concerned that national legislation might unfairly prohibit employment of pregnant or nursing women, on grounds not supported by health and safety concerns. They therefore proposed to narrow the exception to "work which is prejudicial to the health of the woman and child", and to specify separately that such work should be prohibited by national laws and regulations. This issue is also closely related to that of health protection, dealt with in Paragraph 7 of the proposed Recommendation. Taking these concerns into account, the Office has modified paragraph 2 to replace the reference to work "which is prejudicial" to the health of the woman and child, with a reference to "a recognized or significant risk".

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[17] *Technical and ethical guidelines for workers' health surveillance*, Occupational Safety and Health Series No. 72 (Geneva, ILO, 1998); *Protection of workers' personal data: An ILO code of practice* (Geneva, ILO, 1997).

NURSING MOTHERS

Article 9

1. A woman shall be entitled to one or more daily breaks to nurse her child, which shall be counted as working time and remunerated accordingly.

2. The frequency and length of the nursing breaks provided pursuant to national law or practice shall be adapted to particular needs on the presentation of a medical certificate or other appropriate certification as determined by national law and practice.

Observations on Article 9

Argentina. The right to nursing breaks is difficult to ensure when there is no appropriate infrastructure at the workplace, and on account of the distance between the workplace and the worker's home. The usual practice is that the worker reaches an agreement with her employer as to the possibility of combining the rest periods in such a way that her working hours are reduced by one hour, either at the beginning or at the end of the day. This practice avoids individual negotiations in each specific case.

UIA. These provisions should be transferred from the Convention to the Recommendation. As currently drafted, this Article allows unlimited nursing time which is counted as work time and "remunerated accordingly". Such a provision is excessively detailed and restrictive and would be an obstacle to ratification by many member States.

CTERA. Supports.

Austria. IV. This Article as proposed might constitute an obstacle to universal implementation.

BAK. The entitlements regarding nursing breaks under national legislation are not in practice claimed to a significant degree, since nursing mothers often take leave of absence until the child has passed its 18th month, and mothers who continue to work seldom take up more time to nurse their children than is taken up by internal communications, for example. The BAK prefers the text adopted during the first discussion without the clause "as determined by national law and practice". There is nothing in its experience to suggest that women might take excessive advantage of nursing breaks to minimize their work time.

Azerbaijan. In paragraph 2, the phrase "shall be adapted to particular needs on the presentation of a medical certificate or other appropriate certification" should be replaced with "shall be adapted to the age of the child" to provide optimal protection for the woman and child.

Barbados. The inclusion of "as determined by national law and practice" is supported.

BEC. Nursing breaks should best be dealt with in the Recommendation. As currently drafted, the text would permit an unlimited amount of nursing time – whether hours, days, months or even years – as working time. If the expression "remunerated accordingly" were intended to provide that all nursing time should be remunerated at the same rate as other working time, then that would fail to take into account the various remuneration systems in use. Inclusion of a provision requiring the establishment of nursing facilities would necessarily raise the question of who is to pay. All employers, irrespective of the size of their enterprise, or the composition of their workforce, or in what conditions they operated, would be required to have hygienic facilities on their premises for the purpose of nursing. On this basis, few Members would be in a position to ratify the Convention.

Belarus. Paragraph 1 should include a reference to national law and practice to define the conditions under which a woman is entitled to nursing breaks during working time and, in particular, the duration of such breaks.

Belgium. CNT. A mother's right to choose freely to nurse her child, and the material possibility of exercising this free choice, must be guaranteed. However, the manner of enabling this choice to be exercised should be left to member States, which shall take the measures that are appropriate in the light of their national culture.

Benin. CNP-BENIN. This Article should be transferred to the Recommendation to allow greater flexibility.

Brazil. CNC. This Article should be reviewed. Placing the frequency and length of these breaks under the control of States and their workers' and employers' associations would make it possible for more countries to ratify the Convention and more workers to be protected.

FS. This Article should be maintained as part of the Convention.

Canada. Nursing breaks would more appropriately be addressed in the Recommendation. In view of the absence of provisions on nursing breaks in national legislation, a conclusion with which Canada could comply would be to encourage employers to accommodate this practice wherever possible.

CEC. Although provisions of this nature do not exist in national legislation, this does not mean that it does not provide any form of protection. National legislation is focused more on "health and safety" than on "comfort". This Article exceeds the Convention's original vocation. It introduces an incidental point and neglects the essential aspect of the protection of the health and safety of pregnant and nursing women as set out in Paragraph 7 of the Recommendation. This Article should be shifted to the Recommendation. The protective value of the text would thereby tie in with the legal impact of the text that includes it. This provision would impose too heavy a burden on companies, especially SMEs, particularly with reference to the method of financing, although there is nothing on this subject in the Convention. If the provision remains in the final text, it will be an obstacle to ratification for several countries.

CLC. Provisions for nursing breaks should be included in the Convention rather than in the Recommendation. Any proposal to drop references to remuneration is opposed.

Chile. Reference is made to the needs of the working mother herself, which implies that enterprises shall not be authorized to limit or restrict nursing breaks as a result of their own operating or adaptation needs. The proposed text is not clear on this point and permits extremely flexible applications that could result in the loss of rights for working women. It should be very detailed and establish clearly and unequivocally the exceptional and justified cases in which the rights of working mothers can be adapted or adjusted, which should in no case imply the loss of such rights.

CUT. Wholly supports the text.

Cuba. Should be drafted to ensure not only that daily nursing breaks are provided, but also that those breaks can be adjusted to meet the preferences of the working mother herself and prevailing conditions and national practices, as well as the needs of the child. Breaks of up to one hour in the work timetable do not meet the objective of allowing mothers to nurse their children and are not supported by the workers themselves.

Cyprus. Cyprus Chamber of Commerce and Industry (CCCI). Paragraph 2 should be transferred to the Recommendation.

Czech Republic. A suitable provision for establishing adequate facilities for women who nurse their children should be included in this Article.

CMK OS. After "daily breaks" in paragraph 1, add "of a total duration of no less than 90 minutes".

Denmark. If an Article on nursing breaks should be accepted in the Convention, a floor of not less than 24 weeks following the birth of the child should be fixed. The Government cannot accept that nursing breaks are to be considered as working time and remunerated accordingly. A reference to national law and regulations should be added to paragraph 1.

DA. The provision belongs in the Recommendation. The question of nursing should be adapted to the various national systems, and not regulated through a globally binding instrument. The inclusion of nursing breaks in a new Convention may be one of the elements which may prevent ratification in many countries. The need for paid nursing breaks should be seen in connection with the total duration of leave in connection with birth. The longer the possibility of leave, the smaller the need for a standard on nursing breaks. Long transport between home and workplace may render such a right meaningless. Such a rule may also raise questions as to requirements for the employer to take over the "working environment responsibility" for the child's well-being, including – but not exclusively – that the employer ensure safe and healthy surroundings during nursing. Another problematic condition is the standard of payments which would be difficult to adapt to a labour market which is based on negotiations between the social partners.

AC, FTF and LO. Seen in the light of an increasing tendency to introduce flexibility during the maternity leave period, so that women may return to work for periods during their maternity leave, as well as an expectation of more fathers using paternity leave, there may also be a need to provide nursing facilities in the workplace with a right to nurse during working hours. In the light of these tendencies, the present wording of paragraph 1 should be maintained.

Egypt. Agrees.

El Salvador. National legislation does not as yet contain any provisions regarding adaptation of nursing breaks to particular needs.

Estonia. EATU. Supports the text.

Finland. A provision for nursing breaks would not be of major practical significance because maternity leave amounts to about 18 weeks and may be extended in the form of parental leave, which can amount to about 44 additional weeks. In situations where the mother would return to work earlier, the counting of nursing breaks as working time and the remuneration for this may cause problems in Finland. Counting the time as working time is of importance, for example, when estimating and compensating overtime work. Such a provision may also have an unfavourable effect on young women's access to employment, and in practice it may lead to discrimination. The Convention should include an entitlement to nursing breaks, but the provision on the counting of breaks as working time and the remuneration of these breaks should be deleted from the end of paragraph 1. Instead, a provision should be added stating that "the maximum duration of such entitlement may be fixed by national laws and regulations".

KT. The provision causes unreasonable difficulties and is impossible to adopt. The nursing break is completely inconsistent with parental leave and care leave schemes.

Employers' Confederation of Service Industries in Finland (PT) and Confederation of Finnish Industry and Employers (TT). This Article should be returned to the Recommendation. Provisions on nursing breaks were one of the very major reasons why Finland was not able to ratify the previous Convention. Nor should the time for "nursing breaks" be counted as working time and thus as time to be remunerated by the employer.

VTML. This Article should be deleted.

AKAVA, SAK and STTK. The transfer of nursing breaks from the Recommendation to the Convention is justified, since nursing is important to the health of a baby.

France. This Article goes far beyond the provisions established by the French Labour Code and raises major difficulties. Its proposed wording is not acceptable. If it is logical for the principle of entitlement to nursing breaks to be covered in the Recommendation, the modalities for these breaks must also be included in the Recommendation.

MEDEF. This Article is not acceptable because the remuneration of nursing breaks would introduce additional costs. At the very least, it should be moved back to the Recommendation.

Germany. This Article is consistent with national legislation.

BDA. This Article should be returned to the Recommendation, in particular paragraph 2, which covers details that should be left to each Member to settle. Paragraph 1 would not be without problems, even if it were in the Recommendation. In order to avoid problems of implementation, in particular for small firms, the nursing breaks to which a woman is entitled – which are to be counted as working time and remunerated accordingly – should be limited in number and duration.

DAG. The reintroduction of the provisions on nursing breaks is supported. It is essential that these be maintained for the protection of mother and child.

DGB. It is absolutely essential that nursing breaks be firmly established in the Convention. The DGB supports this Article.

Ghana. GEA. The length of nursing breaks for women for an identified period should be negotiated by workers' representatives and employers.

Greece. Agrees.

Guatemala. The following new paragraph 3 is proposed: "By mutual agreement between the employer and the woman concerned, it should be possible to combine the time allotted for daily nursing breaks to allow a reduction of hours of work at the beginning or at the end of the working day." A new paragraph 4 should be added as follows: "Provision shall be made for the establishment of facilities for nursing under adequate hygienic conditions; national law and practice shall fix the minimum number of women workers required for this obligation to be met."

India. Agrees.

HMS. Nursing breaks should be included within the Convention and adapted or extended to meet particular needs.

Italy. Requests have been received from numerous representative organizations relating to the revision of the Convention concerning the possibility of extending the period of paid maternity leave from the current 16 weeks to 26 weeks and other easier arrangements for nursing mothers.

CGIL, CISL and UIL. The proposed text should be maintained, including the remuneration of nursing breaks.

Japan. In paragraph 1, the wording "in accordance with national laws and regulations or practice of each member State" should be added following "child". Whether or not nursing breaks are counted as working time and are remunerated should be decided through discussions between workers and employers in each country and should not be prescribed in the Convention. Consequently, the latter part of the sentence should be deleted. Paragraph 2 should be shifted to the Recommendation and amended to read: "The frequency and length of the nursing breaks shall be provided pursuant to national law or practice, taking into account particular needs upon the presentation of a medical certificate or other appropriate certification as determined by national law and practice."

NIKKEIREN. Supports the Government's proposal.

JTUC-RENGO. Supports this Article. Nursing breaks should be counted as working hours and remunerated accordingly. Otherwise, low-paid workers would not take nursing breaks because of the loss of wages, causing negative effects on the health of mother and baby.

Republic of Korea. KEF. This Article presupposes that every enterprise establish in-house nursing facilities to provide nursing time to female workers. Moreover, paid nursing time is in disregard of various wage systems of different countries. This Article should be placed in the Recommendation.

Lebanon. The duration of the nursing period should be specified, taking into account the exigencies of work.

Malaysia. MEF. This Article should be deleted, as it presupposes that every place of employment has facilities for nursing or day care.

MTUC. Strongly supports this Article, which should be incorporated in national law.

Malta. Maltese legislation does not make provisions for breaks to nurse a child.

Morocco. A new paragraph 3 should be added to provide for the establishment of nursing rooms in enterprises employing a certain number of women, in order to ensure the effective application of paragraphs 1 and 2, as follows: "A special nursing room shall be provided in every establishment employing more than 50 women aged 16 years or above."

CDT. The instrument should establish a minimum duration of daily nursing breaks, equivalent to a single 90-minute break if there are no nursing facilities at the undertaking.

Netherlands. This Article should not be moved from the Convention to the Recommendation. The Office's proposal to include a reference to "national law and practice" in paragraph 1 is supported.

VNO-NCW. The issue of nursing breaks should be dealt with in Paragraph 8 of the Recommendation. In order to define the conditions under which nursing breaks might be taken, reference should be made to national law and practice.

FNV. A reference to national law and practice in paragraph 1 is not supported.

New Zealand. NZEF. This Article is not related to the period of pregnancy and childbirth but instead to the period after the baby is born. It is more appropriately dealt with in the context of Convention No. 156, particularly as women's needs in this respect are likely to be highly variable. This Convention will enjoy greater success if its focus is specifically on pregnancy, childbirth and the leave period. If this Article is retained, the reference to national law and practice should be moved from paragraph 2 to paragraph 1. However, the NZEF is strongly of the view that this Article should not form part of the Convention.

NZCTU. The reference to national law and practice in this Article should be moved to paragraph 1. There is a clear distinction between Convention No. 156, which is primarily an equal opportunities standard designed to prevent discriminatory practice, and the proposed Convention, which is primarily a minimum standards document designed to protect employment, giving due regard to maternal and child health. A minimum standard for nursing breaks undoubtedly belongs within a maternity protection Convention. The NZCTU supports a minimum international standard on nursing breaks and does not believe that this issue is more appropriately a matter for negotiation between individual workers and employers. There is no evidence that women in New Zealand are able to obtain nursing breaks through negotiation. The Employment Contracts Act 1991 undermines the capacity of workers to negotiate such benefits and current equal employment opportunity provisions and processes in New Zealand are not robust enough to guarantee nursing breaks.

Norway. The words following "nurse her child" in paragraph 1 should be deleted. Norwegian women's rights to salary during leave of absence for this purpose are regulated in collective or individual agreements. Counting nursing breaks as working time would be an obstacle to ratification. Proposes the addition of: "The maximum duration of such entitlement may be fixed by national law or regulation." It is assumed that the term "nursing mothers" means "breastfeeding mothers". Comments on this should appear in the report.

LO. Entitlement to nursing breaks should be counted as part of working hours and should thus be remunerated.

Philippines. Provision for nursing mothers may not be feasible in some cases, as this would mean providing nursing rooms, personnel expenses, and the man-hour losses resulting from the nursing process itself, which might be onerous for some enterprises.

Portugal. CIP. This provision, if included in the Convention, should be restricted to breastfeeding and leave Members to regulate the situation according to domestic legislation.

CAP. This Article should be deleted from the Convention because such detailed rules could pose difficulties for ratification. These matters are better left to domestic legislation.

Russian Federation. Could agree to the proposed text.

South Africa. Supports inclusion of this provision in the Convention. However, it is not clear why a nursing mother would have to present a certificate to qualify for a nursing break. It is generally acknowledged that breastfeeding is good for babies. Paragraph 2 should be reformulated as follows: "The frequency and length of nursing breaks shall be adapted to particular needs and determined by national law and practice."

BSA. This Article is far too prescriptive and will be very costly to implement. As such, it will, inter alia, be counterproductive to employment creation – something which many countries, including South Africa, cannot afford. This Article should be deleted from the Convention.

Spain. The provisions of a Convention are characterized by their general nature, which permits their application by a greater number of member States and to a greater number of persons. It is not particularly in keeping with that aim to indicate that it will be the wishes of each worker concerned which, in the final analysis, will determine the distribution of nursing breaks. The provision will be sufficiently flexible if it indicates that the frequency and duration of the breaks shall be regulated in accordance with national law or practice. The possibility of taking particular conditions into account remains implicit in Article 11 on implementation.

UGT. This should cover both breastfeeding and bottle feeding and, in the latter case, could be extended to working fathers.

Sweden. The introduction of breaks for nursing during working hours can be regarded as a question affecting the health of mother and child and therefore fits in well with the Convention. On the other hand, a stipulation that breaks for nursing be counted as working time and remunerated accordingly cannot be made to rest on health arguments and will constitute an impediment to ratification by Sweden. Sweden does not have any special provisions on nursing during working hours, because our parental leave legislation affords such great opportunities for leave that mothers very seldom return to work while they are still nursing. Sweden may therefore need to consider making nursing breaks during working hours a part of its national legislation in order to be able to ratify a Convention to this effect. The words in the first sentence of paragraph 1 following "nurse her child" should be deleted. Entitlement to nursing breaks in the event of special needs should not be made conditional on a medical certificate, because a rule of this kind might have the effect of limiting the right set forth in paragraph 1. The text following "particular needs" in paragraph 2 should be deleted. The duration of such entitlement to leave should be determined by national legislation or regulation, and a new paragraph 3 is therefore proposed as follows: "3. The maximum duration of such entitlement may be fixed by national laws or regulations."

Switzerland. While national legislation allows mothers time for nursing, there is no reference to payment of wages and the issue remains controversial.

UPS. Nursing breaks should not be included in the Convention but rather in the Recommendation. While national legislation provides for nursing breaks, the question of whether they should count as working time is still very much debated. This matter should not be regulated by legislation, but instead left to negotiations between the social partners. It is inadmissible that a legal provision should impose charges on an employer for a matter pertaining to the private lives of the women concerned. For a number of countries, this text would constitute an excellent reason not to ratify this instrument.

USS/SGB. These provisions were rightly included in the text of the revised Convention and should remain there.

FSE/VSA. Endorses the inclusion of this Article in the Convention. Employers do not necessarily allow nursing breaks or count them as working time.

United Republic of Tanzania. A realistic length of breastfeeding period should be specified.

Thailand. ECONTHAI. It would be difficult to apply this provision, because a mother may work far away from home. It would be applicable only where an establishment operates a nursery within its compounds. The provisions are not explicit about the maximum duration of the nursing period, which should be limited to 60-90 days.

Turkey. TİSK. Remuneration of nursing breaks as working time during daily working hours is neither acceptable nor reasonable. Adoption of such a provision, which may create difficulties for an enterprise of any size, would constitute one of the most important obstacles to the ratification of the Convention. This provision should be taken out of the Convention and placed in the Recommendation.

United Kingdom. The Government is fully committed to the promotion of breastfeeding, which is uniformly accepted as the best form of nutrition for infants. However, it does not support the inclusion of a provision for nursing breaks within the proposed Convention. Matters such as the provision and detailed arrangements of breaks for nursing mothers are best left to employers and workers to arrange in the light of their particular circumstances. Where employers are able to provide nursing mothers with breaks to breastfeed their children or express their milk with facilities to store it, this is to be welcomed. The impact of legislating to require all employers to provide nursing breaks for women returning to work after giving birth for an unspecified length of time, as would appear to be required under Article 9, could be particularly disruptive and burdensome for some employers and in some sectors. Whether or not to legislate on the provision of nursing breaks is best left to individual member States. The Government remains firmly of the view that the provision of nursing breaks, as set out in this Article, should be considered in the context of their inclusion in a Recommendation. The inclusion within the Convention of a provision on nursing breaks as reflected in this Article would call into question the Government's ability to ratify the new Convention.

CBI. Breaks for women nursing children go well beyond minimum standards for maternity protection. This Article does not appear to take account of the difficulties involved in putting such provisions into practice in a huge variety of workplaces. Nor does it show an appreciation of the cost implications for employers or the likely consequences for the employment of women of childbearing years.

United States. In order to ensure that a nursing employee is accorded the same rights as other workers in the workplace, language should be inserted to make clear that any breaks taken to nurse a child, which are counted as working time, should be treated the same as other paid breaks, and remunerated accordingly. Paragraph 2 as presently drafted is supported.

USCIB. The subject of nursing mothers should be dealt with in the Recommendation. Under Article 9 as currently drafted, a woman could be granted an unlimited amount of paid nursing time, including access to hygienic facilities at the worksite, up to the length of the workday. The provision lacks common sense and practicality and will serve as a fundamental obstacle to ratification.

Office commentary

The entitlement to nursing breaks established by Article 9 generated a very large number of strong and conflicting views. This provision had been transferred from the Proposed Conclusions with a view to a Recommendation following an extensive debate during the Committee's first discussion; no consensus has since emerged on the issue whether it should be placed in the Convention or Recommendation. Workers' organizations and many governments strongly favour its retention in the Convention, on the basis of the importance of nursing for the protection of mother and child. Employers' organizations and several other governments equally strongly argue that it should be dealt with only in the Recommendation. In support of their position, they contend that the different payment systems in use around the world are not adequately taken into account in the phrase "counted as working time and remunerated accordingly". They add that the provision will be costly for employers, especially since it will create pressure for the provision of nursing facilities at the workplace, and that the need for nursing breaks in different situations must be related to questions such as the total duration of maternity leave and parental leave and the time taken and conditions under which mothers travel to and from the workplace. They point out that many countries do not provide for nursing breaks or, if they do, in many cases their provisions would not comply with the proposed text, and conclude that the provision will be a significant barrier to widespread ratification of the Convention. Nonetheless, in view of the large number of replies supporting the retention of provision for nursing breaks in the Convention, this is an issue that will need to be determined by the Conference.

The Office had, in Report IV(1), invited comments and clarification from Members as to whether comparable rights and obligations exist in their national law and practice with regard to four points: a woman's entitlement to nursing breaks for an undefined period; the counting of nursing breaks as working time; the remuneration of nursing breaks; and the requirement that the frequency and length of nursing breaks be adapted to particular needs on the presentation of appropriate certification. Information was provided in response concerning 35 countries, of which just over two-thirds made provision for nursing breaks in their national laws and regulations. Amongst those that had such provisions, a certain number did not specify the national situation in respect of every question.[18] A summary of responses is provided in the box.

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[18] This response broadly corresponds to information previously published by the Office concerning 145 countries ("Maternity and work", in *Conditions of Work Digest*, Vol. 13, 1994), in about 65 per cent of which nursing break entitlements existed.

Nursing breaks: Information supplied by Members on national law and practice

1. Do comparable rights exist in national law and practice with regard to a woman's entitlement to nursing breaks for an undefined period?

Yes Portugal, Venezuela

No Argentina, Azerbaijan, Barbados, Belgium, Belarus, Benin, Brazil, Canada, Ecuador, Egypt, Finland, France, Guatemala, India, Italy, Japan, Lebanon, Nepal, Netherlands, New Zealand, Qatar, Russian Federation, Spain, Sweden, Tunisia, United Kingdom

2. Do comparable rights exist in national law and practice with regard to the counting of nursing breaks as working time?

Yes Austria, Azerbaijan, Belarus, Brazil, Egypt, Germany, Guatemala, India, Italy, Netherlands, Portugal, Qatar, Russian Federation, Spain, United Republic of Tanzania, Tunisia

No Barbados, Belgium, Canada, Finland, France, Japan, Lebanon, Nepal, New Zealand, Norway, Sweden, Switzerland, United Kingdom

3. Do comparable rights exist in national law and practice with regard to the remuneration of nursing breaks?

Yes Austria, Azerbaijan, Belarus, Brazil, Egypt, Germany, Guatemala, India, Italy, Netherlands, Portugal, Qatar, Russian Federation, Spain, Tunisia

No Barbados, Belgium, Canada, Finland, France, Japan, Lebanon, Nepal, New Zealand, Norway, Sweden, Switzerland, United Republic of Tanzania, United Kingdom

4. Do comparable rights exist in national law and practice with regard to the requirement that the frequency and length of nursing breaks be adapted to particular needs on the presentation of appropriate certification?

Yes Austria, Azerbaijan, Belarus, Germany, Guatemala, Netherlands, Russian Federation

No Barbados, Belgium, Canada, El Salvador, Finland, France, India, Lebanon, Nepal, New Zealand, Portugal, Sweden, United Republic of Tanzania, United Kingdom

In relation to the period of nursing breaks, two countries stated that nursing breaks were permitted for as long as the mother was breastfeeding her child. All the other countries whose replies dealt with this question either had no provision for breaks or imposed a limit on the period, ranging from six months to two years. In a few cases, this could be extended for medical reasons. Many of the replies from governments, as well as employers' organizations, suggested amending paragraph 1, in order that a period could be specified within which nursing breaks might be taken.

Several replies drew attention to the importance of nursing breaks for the health of mother and child. In this context, and in response to the Government of Norway, the Office understands "nursing mothers" to mean "breastfeeding mothers". The provision for nursing breaks is therefore intended to apply only to breastfeeding mothers and the Office has changed the title accordingly. Paragraph 1 does not establish a requirement to provide proof of breastfeeding. However, it should be added that the application of the Article would not be restricted to mothers who nursed their children during working time. For mothers whose babies are not in workplace-based childcare facilities or within easy distance from the workplace, the expression of milk at intervals during working time is a normal aspect of breastfeeding, which the provision of nursing breaks is intended to protect. One reply proposed to extend the provision to cover bottle-feeding and therefore to enable mothers or fathers to take advantage of the provision, but this would clearly go beyond the purpose of safeguarding the health of mother and child. A few replies suggested that a provision be added to the Convention requiring the establishment of facilities for nursing. Since the practicability of the Article has been the subject of contention, the Office has not adopted this proposal.

Treatment of nursing breaks as working time and remuneration of breaks were discussed as a single issue in nearly every response. In about half of all the countries that replied, breaks were provided and counted as working time: this represented 80 per cent of those countries with provision for nursing breaks whose replies dealt with this aspect. This probably overestimates the extent to which paid nursing breaks are available around the world: according to the information previously published by the Office concerning 145 countries,[19] less than 40 per cent of these specified that nursing mothers were entitled to paid nursing breaks.

As noted above, views on this question were strong and divided. Many of the responses, even from some of those which proposed to delete references to remuneration of working breaks, accepted that availability of nursing breaks is an issue affecting the health of mother and child. A number of replies pointed out that the provision could be effective only if mothers could choose freely to nurse and were guaranteed the material possibility of exercising this free choice. In this context, they argued, if breaks were not counted as working time and remunerated, lower paid workers might be unable to take them, with consequential adverse effects on the health of mother and child. It is true that many mothers who return to work while they are still nursing (especially outside the wealthiest industrialized countries) probably do so precisely because they cannot afford to be without income from employment. For many women workers, the remuneration of breaks is an essential component that determines their real access to health protection.

With a view to reconciling these arguments, the Office has considered whether it would be possible to retain the principle of nursing breaks, together with adequate guarantees to protect the effective capacity of women workers to avail themselves of the right, while avoiding some of the practical obstacles mentioned by employers' organizations and others. It seems that deletion of the requirement that breaks be counted as working time could create new problems. For example, nursing mothers who took nursing breaks might, by this very fact, be considered to be part-time workers, since their working hours would be considered to be less than those of comparable full-time workers or, alternatively, they might need to work additional hours in order to effectively complete a full-time workday. Surely this outcome could not be intended. One approach might have been to seek to preserve the essential purpose of the provision by specifying that nursing breaks are to be counted as working time, but omitting the reference to "remunerated accordingly". Under most conditions, the question of remuneration would flow naturally from the treatment of nursing breaks as working time and thus workers' protection would not be affected. Such an amendment would be for the Conference to determine. However, the Office has taken the opportunity to better align the English and French texts by replacing the word "accordingly" with the words "in consequence". This amendment will also go at least some way in providing greater flexibility in taking account of different systems of remuneration and avoiding the obstacles raised.

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[19] "Maternity and work", op. cit.

In view of the concerns and arguments expressed in the replies and of the information supplied on national law and practice – especially as regards the widespread application of a limit to the period of nursing breaks – the Office has split paragraph 1 into two paragraphs. The first paragraph contains the basic entitlement to nursing breaks, while the second specifies that they are to be counted as working time and remunerated in consequence, and also allows the period of entitlement and the length and frequency of breaks to be determined in accordance with national law and practice.

Relatively few countries specified in their replies whether their laws and regulations required adaptation of the frequency and length of nursing breaks according to particular needs. It seems quite likely that most of those that did not reply make no such provision. Of those countries that answered, a minority required adaptation according to particular needs, although in some cases responses indicated that breaks were often in practice adapted by agreement between the employer and woman concerned, even though national laws and regulations did not require it. In some countries, the frequency and length of breaks could be adapted without the requirement of a medical certificate. One reply proposed replacing the reference to medical or other certification with a reference to the age of the child. This suggestion has not been taken up, since it does not fulfil the original purpose of the provision, which was to ensure a degree of flexibility for the working mother where this was warranted on medical grounds, and since the age of the child is only one of many factors that could affect the frequency and timing of nursing breaks.

The drafting of the provision was not as clear as it might have been. Although the paragraph began with a reference to the frequency and length of nursing breaks, in fact it is not a general disposition dealing with these matters, but rather one dealing with particular individual cases justifying adaptation of the general provisions. The Office has accordingly reworded the paragraph so as to make it clearer that its purpose is to deal with these particular cases.

Many replies proposed that the modalities for implementing the entitlement to nursing breaks should be dealt with in the Recommendation, while the Convention should simply establish the basic rights. In view of these concerns, and of the fact that relatively few countries have legislation specifying that the frequency and length of nursing breaks should be adapted to particular needs on the presentation of a medical certificate or other appropriate certification, the Office has moved this paragraph into the Recommendation, amended as described above to clarify its intended meaning.

PERIODIC REVIEW

Article 10

Each Member shall examine periodically, in consultation with the most representative organizations of employers and workers, the appropriateness of extending the period of maternity leave or of increasing the amount or the rate of benefits referred to in Article 5, paragraph 3, above.

Observations on Article 10

Brazil. CNC. The question arises as to whether the requirement of periodic review would apply to countries where the 16-week period put forward in the Recommendation had been equalled or exceeded.

Canada. CEC. This provision is far too ambitious.

Denmark. Article 10 seems rather extensive if Members should regularly examine whether maternity leave should be extended and report this to the ILO.

Ecuador. Agrees.

Egypt. Agrees. However, an excess of paid leave could lead employers to abstain from hiring women workers.

El Salvador. Article 10 would require a reform of national legislation in the light of Article 11.

Finland. Although matters included in the Recommendation alone are not usually dealt with in connection with reporting, parental leave should also be added to this Article so that member States do not disregard parental leave altogether, but are forced to examine it at least in connection with reporting. Member States have to examine the raising of the implementation level of the Convention in other respects, too.

PT and TT. Periodic review is not justifiable in cases where the length of maternity leave and the level of compensation paid for that period in a member State are already adequate.

France. MEDEF. An obligation to carry out periodic consultations on the question of extending leave and benefits is meaningless in countries such as France, where a high level of maternity insurance is already in place.

Germany. The fact that the Government is obliged to review the Convention periodically "in consultation" with management and unions, with a view to a possible extension of maternity leave or improvement in financial benefits, does not mean that it is obliged to meet any standards set by management and unions. The wording "in consultation" makes it clear that all parties are closely and simultaneously involved in the respective arguments incorporated into the decision-making. Admittedly, a consultation may sometimes give rise to a serious dispute, but in principle it cannot force the Government to take a particular decision.

Ghana. GEA. Working on the extension of maternity leave is unacceptable. Members should endeavour to maintain the 12 weeks' maternity leave under the Convention.

Greece. Agrees.

India. Agrees.

Japan. Replace "periodically" with "when necessary".
NIKKEIREN. Replace "periodically" with "as circumstances demand".
JTUC-RENGO. Supports.

Lebanon. An explanation is requested of the words "in consultation" and their legal consequences, as compared to "after consulting" in Article 2, paragraph 2.

Malaysia. Periodic review should be an ongoing process as regards amendments to national employment laws.

Namibia. NPSM. Delete the text after "increasing" and add "the rate of cash benefits".

Netherlands. Include the periodic examination of the appropriateness of increasing the maximum period of additional leave.

FNV. Periodic review should also include the appropriateness of extending the maximum period of additional leave.

New Zealand. NZEF. This Article should be deleted. It is important for ratification purposes that the Convention concern itself with basic standards only. Whether or not the maternity leave period should be extended, or the amount or the rate of the benefits increased (which would inevitably involve associated reporting requirements), is not a matter with which the Convention can appropriately deal.

Portugal. Agrees, provided that the period of 12 weeks' leave is maintained. It would encourage States to extend the period of maternity leave without imposing a definite increase.

CIP. Rejects Article 10. These are matters specific to Members.

Spain. This provision is without equivalent in any other ILO Convention. It implies that Members have an obligation to revise their legislation periodically in order to extend the period of maternity leave or raise the level of benefits. This provision implies the self-revision of the Convention, which is inappropriate and would make ratification difficult. This element of rigidity would be detrimental to the systems which provide greatest protection in relation to the length of leave and the level of benefits. The text will be revisited during the second discussion.

CCOO. Add the following at the end of the Article: "and the possibility of progressively extending the provisions of the Convention to the categories of workers excluded by the Member in accordance with Article 2, paragraph 2".

Sweden. When a member State considers extending maternity leave or improving the benefits for such leave, it should also consider the possibilities of introducing parental leave as an adjunct to such maternity leave. The phrase "of introducing parental leave after the maternity leave has expired" should be inserted after "maternity leave".

United Kingdom. During the first discussion, clarification was sought as to whether the objective of the provision was for a continuous increase in standards, irrespective of the level at which they started, or simply to promote raising the levels to those aspired to in the Recommendation. Clarification was also requested as to whether existing statutory or administrative arrangements for reviews in which the social partners could participate would meet the requirements of the Article. In response, the representative of the Legal Adviser confirmed that, although the provision could be read as requiring continuous improvement, that had not been the Office's intention. There would be no requirement to set up a specific review mechanism where existing statutory or administrative mechanisms existed. So as to remove any uncertainty over the requirements of the Article, the draft should be amended to clearly reflect the advice of the representative of the Legal Adviser that:

(a) any extension of the maternity leave period or increase in the rate of benefits was with a view to achieving the periods or levels recommended in the Recommendation; and
(b) there is no requirement to set up a specific review mechanism where regular administrative or statutory review machinery which the social partners can feed into is already in operation.

United States. Supports.

Office commentary

Support for this Article was expressed by the majority of governments and all of the workers' organizations which provided comments. Three suggestions were put forward to include additional topics in the periodic review process. Two governments proposed including the examination of the possibility of introducing parental leave. One government suggested adding "increasing the maximum period of additional leave" to the issues to be reviewed, a proposal echoed by a workers' organization. Another workers' organization suggested including "the possibility of progressively extending the provisions of the Convention to the categories of workers excluded by the Member in accordance with Article 2, paragraph 2" among the topics to be reviewed. Employers' organizations rejected this Article, with some calling for its deletion and one suggesting that the word "periodically" be replaced with the words "when necessary". The Office has not amended the provision in line with these proposals, which are for the Conference to consider.

Several replies raised the issue as to whether such a provision would require periodic review of leave and benefits levels only until the levels defined in the Recommendation had been achieved or whether the review process would be incumbent on all Members which ratified the Convention, including those which provided a period of leave and level of benefits equal to or in excess of those found in the Recommendation. One government considered that such a provision introduced an element of rigidity which was detrimental to the systems which provided the greatest protection in relation to the length of leave and the level of benefits. Comments received from employers' organizations called the proposed Article "not justifiable" or "meaningless" in countries where leave and benefits were adequate or high. In the view of the Office, the provision would apply to all Members which ratified the Convention, but the frequency of the periodic review process could very well be less for those providing high levels of protection.

A second question was raised by the Government of the United Kingdom as to whether new review machinery was required or whether existing statutory and administrative reviews in which the social partners played a role would meet the requirements of the provision. In the view of the Office, there is no requirement to set up a specific review mechanism if the existing machinery permits periodic examination in consultation with the most representative organizations of employers and workers. The Government of Lebanon requested clarification of the phrase "in consultation with" as compared to "after consulting". The reader is referred to the explanation provided in the commentary to Article 2, paragraph 2.

The Office was requested to provide instances of other ILO Conventions which contain provisions for continuous improvement. There are at least 14 Conventions which provide for some form of periodic review. Of these, seven may be termed "promotional" Conventions, which require the formulation, implementation and periodic review of national policy in a particular field.[20] All contain provisions requiring consultation of representative organizations of employers and workers. Eight Conventions provide for review with regard to substantive provisions.[21] The four most recent of these call for "periodic" or "regular" review. All contain provisions regarding consultation of the social partners, although the mode and object of consultations vary.[22]

IMPLEMENTATION

Article 11

This Convention shall be implemented by means of laws or regulations, except in so far as effect is given to it by other means such as collective agreements, arbitration awards or court decisions, or in any other manner as may be consistent with national practice.

Observations on Article 11

Canada. CEC. The basis of the text should be kept in order to establish application methods.

Croatia. Delete.

Ecuador. Agrees.

Egypt. Agrees.

Greece. Agrees.

India. Agrees.

Japan. JTUC-RENGO. Supports.

Lebanon. This Article should be reformulated to read: "This Convention shall be implemented by means of national laws, collective agreements, arbitration or court decisions, or in any other manner consistent with national practice."

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[20] Conventions Nos. 155, 159, 161, 170, 174, 176 and 177.

[21] Conventions Nos. 33, 88, 115, 122, 174, 175, 181 and 182. Convention No. 174 has both types of provisions.

[22] See, for example, the Part-Time Work Convention, 1994 (No. 175), Article 8, paras. 3 and 4.

Malaysia. This Convention shall be implemented by those member States which ratify this Convention.

Switzerland. UPS. A more flexible approach to the implementation of the instrument, namely by promoting the collective bargaining approach over legislative constraints, would certainly help to facilitate ratification by more States. Moreover, a solution called for by the social partners is always easier to introduce in practice, and therefore more effective, than a legal requirement.

United States. Supports.

Office commentary

Very few comments were received on this text, and most expressed support or agreement. It is recalled that 96 of the 104 replies to the Office questionnaire accompanying Report V(1) agreed that there should be an implementation provision with wording similar to that of the current proposed text, which was comparable to wording of implementation provisions of a number of other Conventions. The only change in the content originally proposed in the questionnaire accompanying the preliminary report was to specifically provide that effect may also be given to the Convention by means of arbitration awards or court decisions, an amendment based on replies to the questionnaire, and also consistent with implementation provisions of other recently adopted Conventions. One reply suggested that ratification would be facilitated if implementation by collective agreements were promoted, as solutions agreed to by the social partners were most easily applied in practice. Another proposed that the text should simply state that the Convention "shall be implemented by means of national laws, collective agreements, arbitration or court decisions, or in any other manner consistent with national practice", and a third reply suggested that there should only be a requirement that the Convention "be implemented" when ratified. The wording of the current text is intended to indicate that implementation by laws and regulations should be the first consideration, that in their absence effect may also be given to the Convention through collective agreements, arbitration awards or court decisions, and that when none of these means are applied, implementation may take place "in any other manner as may be consistent with national practice". The ratifying Member therefore has the flexibility to choose an appropriate means of implementation, while still receiving some guidance both in terms of the means to consider and the order in which to consider them. In view of the apparent general support for this text, the Office has made no changes.

FINAL CLAUSES

Observations on final clauses

Argentina. CTERA. Proposes that Convention No. 103 and Recommendation No. 95 be retained in force, since they embody rights and entitlements which are part of Argentine law.

Croatia. The text of the proposed Convention is inadequate because it provides for rights which are reduced with respect to those provided by the Convention that is being revised. If the proposed text remains unchanged, its final provisions should contain a clause stating that Convention No. 103 shall not cease to be open to ratification when the new Convention comes into force, and that the ratification of the new Convention will not ipso jure mean denunciation of Convention No. 103.

Lebanon. There must be no contradiction between the provisions of Convention No. 103 and the proposed Convention. It is imperative to give justifications for keeping Convention No. 103 open to ratification by Members in view of the fact that the Maternity Protection Convention, 1919 (No. 3), is still valid and may be ratified.

Netherlands. The subject of final clauses should be dealt with at the beginning of the Conference. Agreement on the content of the new Convention will be easier to achieve if it is clear right from the start that Convention No. 103 will also remain open for further ratification in the future. The need to aim for the same level of protection for the new Convention will then be less strongly felt. If no explicit provisions are made, Convention No. 103 will no longer be open for further ratification once the new revised Convention comes into effect. In addition, when a member State ratifies the new revised Convention, ratification of Convention No. 103 will, in fact, provide for a higher level of protection than the new Convention. A clause should therefore be inserted in the new revised Convention to the effect that:

(a) both Conventions remain open for ratification;
(b) Convention No. 103 is not automatically revoked upon ratification of the new Convention, but must be explicitly revoked;
(c) Convention No. 103 continues as a "sleeper" if a State ratifies the new Convention, but can be revived if the State revokes the new Convention.

Instead of (c), it is also conceivable that, upon ratification of both Conventions by a State, the most far-reaching provision for any particular subject is the one that prevails. The Netherlands Government requests the Office to examine in its next report the pros and cons of including a clause of this type.

FNV. The Office is requested to provide clarification and elaboration of the pros and cons of the suggested Article. The final clauses should be discussed first in order to facilitate negotiations about the content of a new Convention and a new Recommendation. The Office is requested to elaborate on this subject in the next report.

Pakistan. The existing Convention No. 103 and Recommendation No. 95 should continue to remain valid and open to new ratifications, even if the proposed Convention is adopted.

EFP. In the larger interest of working women, Convention No. 103 should remain operative and open to new ratification.

Observations on the proposed Recommendation concerning the revision of the Maternity Protection Recommendation, 1952[23]

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-eighth Session on June 2000, and

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[23] The observations are preceded by the relevant texts as given in the proposed Recommendation set out in Report IV(1).

Having decided upon the adoption of certain proposals with regard to maternity protection, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Maternity Protection Convention, 2000 (hereinafter referred to as "the Convention");

adopts this day of June of the year two thousand the following Recommendation, which may be cited as the Maternity Protection Recommendation, 2000:

Observation on the Preamble

El Salvador. The Preamble is in keeping with the provisions of the Convention.

MATERNITY LEAVE

1. (1) Members should endeavour to extend the period of maternity leave to at least 16 weeks.

(2) Provision should be made for an extension of the maternity leave in the event of multiple births.

(3) To the extent possible, measures should be taken to ensure that the woman is entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave before or after childbirth.

Observations on Paragraph 1

Argentina. UIA. Maternity leave should not be extended to 16 weeks, as this is unrealistic for many Members. Proposes: "Members should endeavour to extend the duration of maternity leave beyond 12 weeks."

Australia. Leave should be an entitlement which can be accessed at the discretion of the individual employee. Compelling women to take periods of compulsory leave has been determined to be discriminatory in some countries. National law and practice can protect women workers to ensure that decisions about accessing their leave entitlements are made without duress.

Austria. Welcomes the suggested extension of leave to 16 weeks. As long as only part of the maternity leave period is compulsory, a woman should be able to decide when she takes maternity leave (before or after the birth).

Bahrain. Setting of the duration of leave should be left to national legislation and practice.

Barbados. The proposed shift in the words "to the extent possible" is supported.

Belarus. Subparagraph (2) should be extended to cover premature births and other complications arising before or after childbirth.

Belgium. The proposed change is acceptable.

Benin. CNP-BENIN. It is not realistic to increase maternity leave to 16 weeks.

Brazil. The phrase "to the extent possible" does not accurately convey the intended meaning; this phrase should be replaced by "in accordance with national law and practice". It is of the highest importance for women to be allowed to choose the time at which they take their maternity leave, provided that there are no medical reasons against it and that it is in compliance with national law and practice. Extension of maternity leave to 16 weeks would impose an extra burden on Members' economies. It is important to determine whether such an extension might involve some kind of discrimination against employing women or keeping them in the job market or lead to fewer ratifications of the Convention.

FS. Subparagraph (1) should be amended to read 17 weeks.

Canada. Subparagraph (3) is supported. However, in most jurisdictions, employers may require pregnant employees to commence maternity leave when pregnancy interferes with the performance of duties.

CEC. It would be more logical to recommend that countries grant more than 12 weeks' maternity leave rather than specifying 16. The wording of subparagraph (3) is clear, but would be even more precise if the examples suggested in Report IV(1) were included. The following clarification could be added at the end of the sentence: "The measures taken should notably be based on companies' needs."

Chile. CUT. Subparagraph (3) is categorically rejected.

Czech Republic. The recommended period of maternity leave should be 26 weeks.

Denmark. Extended leave in the event of multiple births is such a special provision that it ought not to form part of the Recommendation.

DA. With regard to longer maternity leave, Article 3, paragraph 3, of the proposed Convention is sufficient. Subparagraph (1) should not fix a minimum standard, but instead provide that Members should work towards extending the leave period beyond 12 weeks. Subparagraphs (2) and (3) are inappropriate.

Ecuador. Agrees.

Egypt. Does not agree, because a provision for 16 weeks of maternity leave would be inconsistent with national legislation, which provides for three months' maternity leave. Moreover, too lengthy a maternity leave could make employers refrain from hiring women workers. According to national legislation, "a woman worker may not obtain maternity leave more than three times during her period of service".

FEI. An extension of the period of leave beyond 12 weeks is not acceptable. National economic circumstances do not enable employers to assume any further burdens regarding working mothers or to allow undefined periods of leave, as this could affect the working of an enterprise.

El Salvador. National legislation would require amendment to comply.

Finland. Agrees with change proposed by the Office.

KT. All of Paragraph 1 should be deleted. The extension of maternity leave to 16 weeks is unjustified in Finland given the parental leave scheme.

PT and TT. Subparagraph (3) is totally impossible and unreasonable from the standpoint of the employer. Since the maternity leave of employees even now results in considerable adjustments at the workplace, for instance with regard to the recruitment of substitutes, daily allowances, etc., the situation would be unreasonable if the employee could freely decide when and in how many stages she wanted to use her maternity leave. In the worst case, the employee may be three weeks absent from work, one week at work, three weeks at home, two weeks at work and so on. Subparagraph (3) should state that the period of time of maternity leave should be determined in accordance with national laws and regulations.

France. Only subparagraph (3) is problematic, because the length of prenatal leave has been fixed under national legislation according to the need for protection of mother and child, and it should not be possible for this protection to be called into question during the period preceding confinement.

MEDEF. Setting the duration of maternity leave at 16 weeks in subparagraph (1) might deter some countries from ratifying the Convention. The phrase "to the extent possible" proposed by the Office should refer to the degree to which a woman can exercise her free choice in accordance with national legislation and practice. The principle of a fixed period of leave meets the need to protect the health and welfare of the woman and newborn child, while also meeting the need for a degree of legal security for employers faced with the necessity of finding a replacement for the period.

Germany. Extending the period of maternity leave to 16 weeks and allowing the possibility of choosing when to take the non-compulsory portion of the maternity leave is acceptable. The possibility of choice can enhance a woman's employment prospects and/or employment record. Extension of leave for multiple births should also apply to premature births.

BDA. The extension of leave to at least 16 weeks is strongly opposed. Twelve weeks of leave seem realistic in view of the situation in many countries. The entitlement of the mother to choose the time at which she takes the non-compulsory portion of her maternity leave, covered by subparagraph (3), is also problematic. The possible permutations of this pose too many unpredictable factors in staff planning for the employer. A better formulation would be: "In so far as it does not conflict with the interests of the enterprise, a woman should be able to choose whether to take the non-compulsory portion of her maternity leave before or after childbirth."

Ghana. GEA. Working on the extension of maternity leave is unacceptable. Members should endeavour to maintain the 12 weeks' maternity leave under the Convention.

Greece. The Convention should contain a provision extending the period of leave in the event of multiple births.

India. Extension to 16 weeks has serious financial implications and requires detailed consideration in consultation with the social partners and local government.

HMS. Shifting of the phrase "to the extent possible" is supported.

Italy. CGIL, CISL and UIL. The period of 12 weeks is again put forward as it was in Conventions Nos. 3 and 103. The only slight opportunity for improvement, which is the essential objective to be pursued, would be to increase the maternity leave period to 16 weeks in the Recommendation. Governments should support this proposal.

Japan. Since the period of maternity leave should be decided by each country pursuant to medical considerations, the wording "when necessary" should be added following "at least 16 weeks".

NIKKEIREN. Paragraph 1 is rejected.

JTUC-RENGO. Supports this Paragraph.

Jordan. This text will make employers refrain from employing women in view of the financial burdens to be borne by the employer.

Republic of Korea. KEF. Sixteen weeks of maternity leave is unrealistic for most countries with insufficient systems of maternity leave. Subparagraph (1) should read "Members should endeavour to extend the period of maternity leave beyond 12 weeks".

Lebanon. Extending maternity leave to at least 16 weeks could have adverse effects on the employment of women workers, and its application should be decided in the light of the circumstances of each Member. Extension of maternity leave in the event of multiple births may be appropriate to Members facing some shortage in births and thereby constitute an incentive thereto, but it is no incentive for Members with high birth rates. The phrase "to the extent possible" in subparagraph (3) should apply to both the measures taken and the right of the woman to choose the time at which she takes the non-compulsory portion of her maternity leave, with a view to avoiding disruption in the organization of work.

Lithuania. LLF. A woman should be entitled to take maternity leave according to a doctor's recommendations, but not to choose to take leave freely.

Malaysia. Subparagraph (2) should be deleted.

Malta. National legislation does not provide for an extension of the maternity leave in the event of multiple births.

The Commission for the Advancement of Women asks that employees themselves be given the right to manage leave according to the state of their own health and that of their newborn baby and according to their family requirements.

Morocco. UMT. Proposes an additional subparagraph, as follows: "Measures should be taken to assist a woman whose child is hospitalized or needs special supervision after the compulsory period of postnatal maternity leave."

Namibia. NPSM. Subparagraph (3): see proposed amendment to Article 3, paragraph 1, of the Convention, which captures this point.

Netherlands. Extension of maternity leave prior to and after the delivery in the case of twins or multiple births is not considered consistent with the object of the leave (the physical recovery of the mother). The fact that the mother has twins does not necessarily mean that the period required for recovery will be longer. If circumstances are such that this does indeed prove to be the case, the more obvious course of action is to grant longer leave on account of illness. Proposes to amend subparagraph (3) to make it clear that maternity leave should constitute a continuous period of leave. The non-compulsory part of maternity leave should be taken immediately prior to or immediately after the compulsory part.

VNO-NCW. Extension of maternity leave in the case of twins or multiple births is not considered to be consistent with the object of maternity leave (the physical recovery of the mother).

FNV. Extension of leave in case of multiple birth is fully in accordance with the object of the leave: the physical recovery of the mother. In nearly all cases, women need a longer period of recovery after a multiple birth. It seems illogical not to consider "normal" pregnancy as an illness, but in the case of a multiple birth to refer to a need for a longer recovery period as an "illness".

New Zealand. NZEF. The phrase "to the extent possible" should relate to the measures to be taken to ensure some flexibility as to when maternity leave entitlements are to be taken (as proposed), not to the woman's right to choose when to take leave. However, providing for a period of compulsory leave would of itself interfere with any right of choice.

NZCTU. Agrees to the proposed rewording of subparagraph (3).

Portugal. Agrees to the change proposed by the Office, as this makes it clear that the reference is to measures and not to the woman's right to choose.

CIP. The Recommendation should not place any obligation upon Members to extend maternity leave.

South Africa. BSA. The proposed extension of maternity leave to 16 weeks is totally unrealistic for some countries. BSA would urge that the wording be changed to the effect that "Members should endeavour to extend the period of maternity leave beyond 12 weeks", consistent with the goal of establishing minimum universal labour standards.

Spain. UGT. The change proposed by the Office makes it clear that the intention is to qualify the word "measures" and is therefore appropriate.

Sri Lanka. In the context of developing countries, 16 weeks' maternity leave seems exorbitant. Too much maternity leave may impinge negatively on female employment opportunities in less developed countries.

Switzerland. UPS. The proposal to extend maternity leave from 14 to "at least" 16 weeks is unrealistic for many countries. Subparagraph (1) should be amended to simply say "Members should endeavour to extend the period of maternity leave beyond 12 weeks".

USS/SGB. The proposed extension to 16 weeks should not be reduced or deleted.

United Republic of Tanzania. Subparagraph (2) should be moved to Article 3 of the Convention.

Thailand. ECOT. A total period of 14 weeks as under Recommendation No. 95 could be complied with more readily. Fourteen weeks is enough for the mother to take care of her child and also herself. Explanation is required as to why the period of maternity leave should be extended from 14 to 16 weeks.

ECONTHAI. Maternity leave of 16 weeks is practicable only in rich countries where social security schemes have a lot of money and wide coverage. Subparagraph (2) is unnecessary. A mother does not need recovery and nursing periods of very different length for multiple births. Her extra burden should be assumed by the family itself.

Togo. CSTT. Subparagraphs (2) and (3) should be moved to the Convention.

Tunisia. In subparagraph (3), the words "to the extent possible" could be placed between two commas after "taken", to make it clear that these words refer to the measures to be taken and not to the right of a woman to choose, and not to both.

Turkey. TİSK. Extending the maternity leave period to 16 weeks is unrealistic for a number of countries. Subparagraph (1) should be amended to read "extend the period of maternity leave beyond 12 weeks".

United Kingdom. Does not support the extension of maternity leave in the event of multiple births.

United States. Supports this Paragraph.

USCIB. Extension of maternity leave to 16 weeks is unrealistic and does not facilitate implementation of the Convention.

Venezuela. CODESA. Agrees with the amendment proposed by the Office.

Zimbabwe. As the funding of maternity leave under the current arrangement is by the individual employer, extending the period of maternity leave to 16 weeks might be rather unfeasible as during a third of the year the woman would be idle. The employer tends to be disadvantaged and hence monitoring the implementation of the provisions by the employers becomes a difficult task and women may be disadvantaged or victimized by employers who want to maximize their production and profits. Subparagraphs (2) and (3) are reasonable as recommended, and are fully supported by the Government and the employers' organization.

Office commentary

Subparagraph (1)

Comments regarding this provision were sharply divided between those who accepted or strongly supported the extension of maternity leave to 16 weeks and a larger number who strongly opposed it. Among those who supported the text, one government proposed that the Recommendation provide for 26 weeks of leave. Workers' organizations expressed strong support, with one suggesting that 17 weeks of leave be provided. A government proposed adding "when necessary" at the end, noting that longer leave should be provided pursuant to medical considerations. Among those opposed to the text, five governments cited its potentially adverse effect on women's employment. Several mentioned the serious financial implications of such a period of leave, particularly for employers. One government noted that such a provision would require a reform of its national legislation. For another, the determination of the leave period should be left to national law and practice.

Employers' organizations were unanimous in their rejection of the provision, calling it unrealistic, impractical or unjustifiable. One asserted that the Recommendation should not impose any obligation on Members to extend leave; another noted that Article 3, paragraph 3, was sufficient. Clarification was requested as to why leave should be extended from 14 to 16 weeks, noting that the 14-week period provided in Recommendation No. 95 would be more readily complied with. It is recalled that the extension of maternity leave to 16 weeks was adopted in the course of the first Committee discussion. Several employers' organizations proposed amending the text to read as follows: "Members should endeavour to extend the period of maternity leave beyond 12 weeks." Such an amendment was proposed and withdrawn in the course of the first discussion.

Although a clear majority of responses were not in favour of the 16-week leave period, there was obvious acceptance of the possibility that the Recommendation would provide for a longer leave period than the 12 weeks provided in Article 3 of the Convention. Given the widely divergent views expressed, the Office must leave it to the Conference to decide how best to frame this provision. As a result of a minor drafting change, the term "maternity leave" is followed by a reference to Article 3 in the Convention.

Subparagraph (2)

Governments were evenly divided regarding a possible extension of leave in the event of multiple births. Six governments supported the provision as currently drafted, with two suggesting its transfer to the Convention. Two governments proposed that the text be amended to cover premature births. One suggested including the possibility of extension in the event of prenatal and postnatal complications, a contingency already addressed in Article 4, paragraph 3, of the Convention. Acceptance was also expressed by one employers' organization and the two workers' organizations which provided comments.

Half of the governments responding and almost all employers' organizations rejected this provision. Two governments stated that it would require changes in their national legislation. For one government and two employers' organizations, such an extension was not consistent with the object of the leave, i.e. the physical recovery of the mother after childbirth, which was deemed to be comparable for single and multiple births. This opinion was refuted by a workers' organization in its reply. One government considered that such a provision might be appropriate in countries facing a shortage of births, but not in countries with high birth rates.

The Office has not modified the text, but signals the divided opinion regarding this subparagraph. The Office notes that an extension of maternity leave in the event of multiple births appears in the legislation of 30 member States on which information is available.[24] It will be for the Conference to consider the appropriateness of this provision.

Subparagraph (3)

Wide support was expressed for the third subparagraph, on the understanding that the phrase "to the extent possible" is meant to qualify the word "measures". One government stated that the phrase should apply both to "measures" and to the woman's right to choose, a view explicitly opposed by another government. One government suggested shifting the phrase "to the extent possible" to follow the word "taken" to further emphasize the fact that it qualifies "measures". Another stressed the importance of allowing women the right to choose and therefore proposed replacing the phrase "to the extent possible" with "in accordance with national law and practice". Two governments noted incompatibilities with national legislation.

Several employers' organizations rejected this provision, considering it problematic, unreasonable, inappropriate or unworkable. One employers' organization proposed an alternative text as follows: "In so far as it does not conflict with the interests of the enterprise, a woman should be able to choose whether to take the non-compulsory portion of her maternity leave before or after childbirth." Another suggested adding the following sentence to the current text: "The measures taken should notably be based on companies' needs."

One workers' organization rejected this subparagraph, stating that leave should be taken in accordance with a doctor's recommendation, not according to the woman's choice.

Several responses expressed the desirability of ensuring that the leave entitlement would not be taken in several short periods. One government stated its intention to propose an amendment to clarify that leave must be taken as a continuous period, i.e. any non-compulsory period should be taken immediately before or after the compulsory period. In the view of the Office, no additional wording appears to be necessary, since Article 3, paragraph 1, of the Convention refers to "*a*" period of maternity leave. One employers' organization wished the text to state that the leave period should be determined in accordance with national laws and regulations. Another noted that the principle of a fixed period of leave meets health protection needs and provides legal security for employers who hire replacements for the leave period. A woman might or might not choose to take non-compulsory leave, but she should not have the right to alter its duration by postponing it.

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[24] See: Maternity protection at work, Report V(1), op. cit., p. 44.

In light of the wide support expressed for this subparagraph, the Office has made no modification to the text.

A new subparagraph was proposed by a workers' organization to read: "Measures should be taken to assist a woman whose child is hospitalized or needs special supervision after the compulsory period of postnatal maternity leave." The Office is unclear as to what types of assistance are being proposed in this amendment, but it would appear that they might be more closely related to parental leave and childcare concerns than to maternity protection per se.

MATERNITY BENEFITS

2. Where practicable, and after consultation with the representative organizations of employers and workers, the cash benefits to which a woman is entitled during maternity leave and additional leave, as defined in Article 1 of the Convention, should be raised to the full amount of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.

Observations on Paragraph 2

Canada. This could create a considerable burden for public funds and/or private insurance plans or employers.

CEC. See remarks on Article 5 of the proposed Convention.

Denmark. The level of benefits will become unacceptably high if benefits are to amount to the woman's previous earnings.

DA. Paragraph 2 is inappropriate.

Ecuador. Agrees.

Egypt. Agrees.

Estonia. EATU. Proposes adding a provision regarding the right to assistance and support if the mother is not working, because such persons and their children might be in very bad circumstances and are often especially vulnerable. The mother should have the right to birth assistance; mothers and their children should have the right to medical care and benefits for a certain period.

Finland. KT. Raising compensation for the whole period of maternity leave and additional leave to the level of full pay would increase the employers' costs considerably.

PT and TT. The proposal that cash benefits should be equal to previous earnings is excessive, even in a Recommendation.

VTML. Paragraph 2 is not appropriate.

France. MEDEF. Raising cash benefits to the full amount of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits, is especially ambitious and appears to be a rather strong deterrent to ratification.

Germany. This Paragraph is acceptable.

BDA. This provision should be replaced by the content of Article 5, paragraphs 2 to 4 and 6, and Article 6 of the proposed Convention.

India. Agrees.

Japan. JTUC-RENGO. Supports this Paragraph.

Malaysia. The female employee should be given a maternity allowance equivalent to her monthly wages or, in the case of a daily rated or piece-rated employee, her ordinary rate of pay or a set minimum amount, whichever is higher. National laws on employment should provide statutory minimum standards on maternity leave and allowance to female employees who are within the ambit of the laws. Other cash and medical benefits may be included in the individual female employee's contract of employment, subject to negotiation.

Namibia. NPSM. See proposed amendment to Article 5, paragraph 3, of the Convention.

Portugal. CIP. Cash and medical benefits should not be quantified or specified. This matter must be left to Members.

South Africa. BSA. Increasing cash benefits to the full amount of previous earnings is totally unrealistic given the economic situation in many countries. The suggestion that this should also apply to earnings during additional leave compounds the problem. BSA suggests that the Paragraph be amended to the effect that, after necessary consultations, the cash benefits "should be raised to the extent that it is affordable to the Member (country) concerned".

United Kingdom. On the understanding that "where practicable" includes questions of affordability, the text provides a basis for discussion.

United States. Supports this Paragraph.

Zimbabwe. The proposal is supported. It is good to raise the cash benefits to the full amount of the woman's current earnings, but a limit to the number of children involved should be specified after the woman has joined a specific organization or company. The woman's responsibilities for childbearing should be fully recognized and taken care of.

Office commentary

The heading of this Paragraph was changed from "maternity benefits" to "benefits" to align it with the heading of Article 5 of the Convention. Most governments and all of the workers' organizations that replied agreed with the proposed text of this Paragraph, but employers' organizations were strongly opposed to it. Their view, shared by two governments, was that raising cash benefits to such a level would result in an unacceptably high level of benefits, a considerable burden for public funds, private insurance plans and employers, and an obstacle to ratification. However, one government proposed that the text be extended further to cover unemployed women, who should be entitled to receive birth assistance and medical care and cash benefits for their children until a specific age.

Another government agreed with the text on the understanding that the phrase "where practicable" included questions of affordability, which was also the focus of a proposal by an employers' organization to amend the Paragraph by replacing the phrase beginning with "to the full amount of the woman's previous earnings" with "to the extent that it is affordable to the Member concerned". In this regard, it should be noted that the purpose of the phrase "where practicable" is to allow for national circumstances, including issues of affordability, to be taken into account.

A workers' organization in its reply under Article 5 maintained that many employed women with a low income level would not be in a position to sustain themselves and their newborn infants with anything less than their full earnings. Another workers' organization pointed out that in many cases even that level was insufficient to ensure the full and healthy maintenance of mother and child. For this reason, cash benefits at the same level as previous earnings in some cases could be a vital necessity for the proper maternity protection of the employed woman. Given the general degree of support for this provision, the Office has made no changes.

3. To the extent possible, the medical benefits provided for in Article 5, paragraph 6, of the Convention should include:

(a) care given in a doctor's office, at home or in a hospital or other medical establishment by a general practitioner or a specialist;

(b) care given by qualified midwives or other maternity services at home, in hospital or other medical establishments;

(c) maintenance in hospitals or other medical establishments;

(d) any necessary pharmaceutical and medical supplies, examinations and tests prescribed by a medical practitioner or other qualified person; and

(e) dental and surgical care.

Observations on Paragraph 3

China. Delete clause (e).

Denmark. Medical benefits are specified in too great detail (e.g. dental and surgical care).

Ecuador. Agrees.

Egypt. Agrees to clauses (a), (b), (c) and (d).

Finland. PT and TT. The benefits and the care mentioned in clauses (a)-(e) should be restricted to those related to pregnancy or maternity. Otherwise, any medicines (clause (d)), surgical care and dental treatment (clause (e)) would be included in the benefits recommended.

VTML. The inclusion of dental treatment and surgical treatment is not appropriate.

France. MEDEF. Under national legislation, dental and surgical care are covered by health insurance, not maternity insurance.

Germany. Agrees.

India. In view of the current level of maternity benefits coverage, it may not be feasible at the current stage of economic development to agree to this Paragraph.

Japan. JTUC-RENGO. Supports this Paragraph.

New Zealand. NZEF. It would be better to provide for a general entitlement to adequate care, rather than attempting to spell out what form that care should take.

Switzerland. The benefits listed are covered by regular health insurance in Switzerland, but coverage of dental treatment is subject to restrictive conditions.

United States. Supports this Paragraph.

Uruguay. PIT-CNT. Compared to Recommendation No. 95, the provisions relating to medical benefits are less detailed, and this is a negative aspect of the proposed Recommendation.

Zimbabwe. Strongly supports this Paragraph, although national legislation does not provide for such medical benefits.

Office commentary

Of the few comments received on this Paragraph, several considered that items were specified in too great detail, and one suggested that it would be preferable to provide instead for a general entitlement to adequate care. Otherwise, there was general acceptance of clauses (a)-(d). However, the inclusion of "dental and surgical care" (clause (e)) raised particular concern. One reply proposed that the benefits mentioned be restricted to care relating to pregnancy or maternity. In response, the Office notes that Paragraph 3 is not intended to cover medical benefits unrelated to pregnancy and maternity. Indeed, it contains a reference to the medical benefits provided under the Convention, i.e. prenatal, childbirth and postnatal care. While two replies found the inclusion of clause (e) problematic because health insurance in their countries covered such cases separately from matters directly relating to maternity, in other replies it would appear that the concern about the inclusion of dental care and surgical care arose because their relationship to pregnancy and maternity was not readily apparent. While it was evident that surgical intervention might be required before or after childbirth, it must also be stressed that in some cases as a result of pregnancy and nursing there is a depletion of the minerals needed to sustain healthy teeth, and a resulting need for dental care. The Office made only minor changes to this Paragraph: in clause (b) "in hospital" was replaced by "or in a hospital" to clarify that "or other medical establishment" referred to establishments such as hospitals; in clause (d) of the French version the words "*les médicaments*" ("medications") were deleted to align it with the English version (medications were already covered under pharmaceutical supplies); and in clauses (b) and (c), the plural was replaced with the singular for consistency with the rest of the Paragraph.

FINANCING OF BENEFITS

4. The cash and medical benefits should be provided through compulsory social insurance, public funds or in a manner determined by national law and practice.

Observations on Paragraph 4

Brazil. CNC. This provision should be in the Convention.

Chile. United Trades Confederation of Small and Medium-sized Enterprise, Service and Craft Industries of Chile (CONUPIA). Each country should seek a form of joint funding shared between the employer, the worker and the State to finance a maternity and nursing fund that would apply to all the employees of an enterprise, irrespective of sex. Only in this manner can adherence to the Convention be attained.

Ecuador. Agrees.

Egypt. Agrees.

France. MEDEF. Include a provision to the effect that "an employer shall not be individually liable for the direct cost of any monetary maternity benefit to a woman employed by him or her without that employer's specific agreement".

Germany. Accepts.

BDA. Maternity benefits should be financed from public funds and should never be the responsibility of the employer. A provision corresponding to Article 4, paragraph 8, of Convention No. 103 should be incorporated.

Guatemala. CACIF. Financing of medical benefits should be covered in the Convention. Otherwise, there is no certainty as to whether such benefits are to be covered by a social security system or, in the absence of such coverage, whether the Government bears subsidiary responsibility.

Italy. Agrees with regard to compulsory social insurance.

Japan. JTUC-RENGO. Supports.

Lithuania. LLF. "Public funds" should be deleted.

Spain. CCOO. The text, amended as follows, should be moved to the Convention: "The cash and medical benefits shall be provided through compulsory social insurance, public funds or sectoral funds, in accordance with national law and practice." This would ensure that national legislation does not require a woman to pay private maternity insurance at her own expense. It would also prevent States and/or companies from reducing these costs in a manner which would constitute "social dumping" at the expense of States which bear these costs.

United States. Supports.

Zimbabwe. Strongly supported.

Office commentary

Relatively few comments were received regarding the financing of benefits, but these generally expressed support. One employers' organization and two workers' organizations suggested transferring this provision to the Convention. One workers' organization proposed deleting the reference to public funds, whereas another proposed inserting after "public funds" the phrase "or sectoral funds". Another suggested a form of joint funding shared between employers, workers and government. None of these proposals would affect the capacity of Members to determine the manner in which cash and medical benefits should be provided. Two employers' organizations proposed including under this section a provision similar to Article 4, paragraph 8, of Convention No. 103. It is recalled that such a proposal was also put forward by a large number of employers' organizations in relation to Article 5 of the Convention, where comments are provided. In view of the general satisfaction expressed with this Paragraph, the Office has made no change.

5. Any contribution due under compulsory social insurance providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits, whether paid both by the employer and the employees or by the employer, should be paid in respect of the total number of men and women employed, without distinction of sex.

Observations on Paragraph 5

Austria. A subparagraph should be added to indicate clearly that, where a woman is required to share in the cost of medical care, measures are taken to ensure that she does not suffer hardship and full medical and social protection is maintained.

BAK. A new subparagraph should be included indicating that, where a woman is required by national laws or regulations to share in the cost of medical care, measures must be taken to ensure that this does not lead to hardship and that medical and social protection is safeguarded.

Chile. CONUPIA. See observations on Paragraph 4. Such a joint funding scheme would enable employers to hire women who are pregnant.

Ecuador. Agrees.

Egypt. Agrees.

Germany. Agrees.

Italy. Agrees with regard to compulsory social insurance.

Japan. JTUC-RENGO. Supports.

Portugal. CIP. Funding of benefits should be regulated by domestic legislation. Rules concerning contributions under social security systems must not be included in the Recommendation.

Switzerland. Medical insurance premiums are individual, not related to income, the same for all people insured by a given insurer, and cannot be set at different levels for men and women. Premiums for cash benefits are set by agreement between the insurer and the insured person and depend on the level of benefits guaranteed.

United States. Supports.

Zimbabwe. Fully supports.

Office commentary

Few comments were received on this Paragraph and most of them supported the current wording. However, two governments did not agree with the inclusion of a provision that would take into account a system under which funding of benefits would be by any other means than through compulsory social insurance provided for under national legislation. Moreover, it was suggested that a subparagraph be added to the effect that where a woman was required to bear some of the costs of medical care, measures should be taken to ensure that she did not suffer hardship and that full medical and social protection was maintained. It should be noted that a similar proposal was made in the context of Article 5. The Office made only one minor change to the wording order of this Paragraph: "both by" was changed to "by both" to clarify that "both" referred only to the employer and the employees, and not to the employer alone.

EMPLOYMENT PROTECTION AND NON-DISCRIMINATION

6. A woman should be entitled to return to her former position or an equivalent position paid at the same rate at the end of her maternity leave, the period of which should be considered as a period of service for the determination of her rights.

Observations on Paragraph 6

Austria. This Paragraph should be transferred to the Convention.

Canada. The following amended text is proposed: "A woman should be entitled to return to her former position or a similar one at the end of her maternity leave, and, to the greatest extent possible, the period of maternity leave should be considered as a period of service for the determination of her rights."

Denmark. DA. Inappropriate with regard to seniority.

Ecuador. Agrees.

Egypt. Agrees.

Finland. AKAVA, SAK and STTK. This provision should be transferred to the Convention.

France. MEDEF. The Paragraph is too vague with regard to the rights in question. A further qualification should be added to the effect that leave should be counted "for the determination of entitlements due to her by virtue of her length of service" or, alternatively, a reference to national law or practice could be added.

Germany. Accepts.

India. Agrees.

Japan. Whether or not a woman is entitled to return to her former or equivalent position after maternity leave should be a matter for each Member to determine. Rights of female workers, other than minimum working conditions, should be determined according to the nature of the rights and the circumstances of each Member. "When deemed appropriate" should be added following "end of her maternity leave", and the remainder of the sentence should be deleted.

JTUC-RENGO. Supports.

Republic of Korea. FKTU. This provision should be shifted to Article 7 of the Convention. In practice, not only unfair dismissal but also disadvantages in terms of promotion or deployment are a major part of discrimination suffered by women workers during their pregnancy or absence on maternity leave or during a period following their return to work.

Namibia. NPSM. Delete "or an equivalent position paid at the same rate".

Poland. NSZZ "Solidarność". Supplement this Paragraph with a prohibition of dismissal for a period of at least one year. The provision concerning return to work is not sufficient, because theoretically it allows for a woman's dismissal on the day after her return. A guarantee of one year of protection after maternity leave would be a factor stimulating maternity. Situations where a woman, fearing the loss of her job, gives up maternity, are more and more frequently observed.

Portugal. CIP. Guaranteed employment must not be used to hinder the enterprise from organizing its work satisfactorily, nor to prevent permissible mobility. This Paragraph establishing women's entitlement to return to the same or an equivalent position is rejected. No work is done for employers during maternity leave, so the period should not be regarded as a period of service.

Togo. CSTT. This Paragraph should be transferred to the Convention.

United States. This Paragraph as presently drafted is supported.

Zimbabwe. The concept of "or an equivalent position" needs to be clearly defined as it has potential for abuse and may result in not providing ample protection to women employees.

Office commentary

Rather few comments were received concerning employment protection and non-discrimination in the Recommendation. An employers' organization expressed the view that a woman's entitlement to return to her former position or an equivalent one at the end of her maternity leave should not unduly hinder mobility or work reorganization by the employer. It also considered that maternity leave should not count as service, on the basis that no work was done for the employer during maternity leave. Another employers' organization, on the other hand, sought greater precision concerning the rights for which a period of maternity leave should be considered a period of service. One government was opposed to counting maternity leave as a period of service for the purposes of calculating seniority, while another suggested providing greater flexibility by providing that the period of maternity leave should "to the greatest extent possible" be counted as a period of service. It was suggested by one government that the entitlement to return to her former position should be left to Members to decide. A majority of respondents, however, supported the proposed text, while some suggested going further, by defining "equivalent position" with a view to ensuring adequate protection for working mothers or by deleting altogether the possibility of return to an equivalent position, which would give the woman an absolute entitlement to return to her former position. The workers' organizations that replied favoured strengthening this protection. A few put forward the suggestion, supported by one government, that the provision be moved to the Convention, while another proposed adding a prohibition against dismissal for a year after the woman returned from maternity leave.

The Office notes that this Paragraph as currently drafted provides employment protection only for those employed women who return to work subsequently to maternity leave, and not for such women who may have also taken leave referred to under Article 4 of the Convention ("Article 4 leave"). This would result in the anomaly that under this Paragraph full employment protection would be provided subsequently to maternity leave, but if one further day of Article 4 leave were taken, the same protection would be unavailable. This seems inconsistent with the intent of the employment protection provisions under Article 7 of the Convention, which do extend coverage to women taking Article 4 leave. The Conference may wish to consider whether, and if so in what way, it would wish to align the Paragraph more closely with Article 7. In this context, it is noted that the Paragraph provides two quite distinct rights: firstly, a woman's right to return to her former position or an equivalent one, and secondly the right to have her leave considered as a period of service for the determination of her rights. It is recalled that the leave taken under Article 4 might in some countries be considered to be sick leave, in others maternity leave and possibly another form of leave in other countries. The Conference might, for example, decide that women returning from Article 4 leave should only be entitled to return to their former position or an equivalent position paid at the same rate, without such leave taken subsequently to maternity leave necessarily being considered a period of service for the determination of her rights. It therefore has three options: retain the current wording excluding Article 4 leave; extend both aspects of the employment protection to cover Article 4 leave; or extend the protection only with regard to entitlement to return to the former position or an equivalent one paid at the same rate (a fourth option, to extend protection only with regard to recognition of Article 4 leave as a period of service for determination of rights, does not seem to resolve the inconsistency with Article 7). This will be for the Conference to determine.

HEALTH PROTECTION

7. (1) The employment of a woman on work defined by the competent authority as prejudicial to her health or that of her child should be prohibited during pregnancy and up to three months after childbirth and longer if the woman is nursing her child.

(2) Where the woman's work is the subject of a prohibition of employment during pregnancy and nursing or where an assessment has established a recognized or significant risk to her health or that of the child, measures should be taken to provide, on the basis of a medical certificate as appropriate, an alternative to such work in the form of:

(a) an adaptation of conditions of work;

(b) a transfer to another post, when such an adaptation is not feasible; or

(c) leave, in accordance with national laws, regulations or practice, when such a transfer is not feasible.

(3) Measures referred to in subparagraph (2) above should in particular be taken in respect of:

(a) arduous work involving the manual lifting, carrying, pushing or pulling of loads;

(b) work involving exposure to biological, chemical or physical agents which represent a reproductive health hazard;

(c) work requiring special equilibrium;

(d) work involving physical strain due to prolonged periods of sitting or standing, to extreme temperatures, or to vibration.

(4) The woman should retain her right to return to her job or an equivalent job as soon as it is safe for her to do so.

Observations on Paragraph 7

Argentina. CTERA. To subparagraph (2), clause (a), add "without loss of remuneration"; in clause (b), insert "without any obligation to do night or shift work during pregnancy or the nursing period".

Austria. This Paragraph should be transferred to the Convention. A provision should be added to allow pregnant women and nursing mothers to lie down and rest in suitable conditions.

Barbados. Subparagraph (4) is supported, but it should begin with the words "where any of the above measures have been applied".

CTUSAB. Subparagraph (2) should include the principles of no loss of pay and no obligation to do night work when pregnant or nursing.

Brazil. FS. Subparagraph (1) should be amended to read "... up to three months from the end of maternity leave".

Canada. CLC. The principle articulated in subparagraph (1) should be included in the Convention. Subparagraph (2) should include the principles of no loss of pay and no obligation to do night work or shift work when pregnant or nursing.

Chile. CUT. Supports subparagraph (2). Any changes in a woman's work should not jeopardize her earnings, career or post. More detailed indications of the work deemed to be hazardous to mothers and their children should be included.

Croatia. A new chapter entitled "Health protection" containing the following provisions should be included in the Convention, and the comparable provisions deleted from the Recommendation:

HEALTH PROTECTION

Article 3

1. The employment of a woman on work defined by the competent authority as prejudicial to her health and that of the child shall be prohibited during pregnancy and, on the basis of a medical certificate, for as long after childbirth as the woman is nursing her child.

2. Where the woman's work is the subject of the prohibition referred to in paragraph (1) above, measures shall be taken, in accordance with national law and practice, for the woman to be transferred to another kind of work or, if such a transfer is not feasible, the woman shall be entitled to leave without loss of remuneration.

Czech Republic. CMK OS. Insert the words "without loss of earnings" after "transfer to another post" in subparagraph (2), clause (b).

Denmark. Consideration should be given to moving this Paragraph to the Convention and modifying it in consequence.

AC, FTF and LO. This Paragraph should be moved to the Convention.

Ecuador. Agrees.

Egypt. Agrees.

Finland. Since health protection is a central element of maternity protection, this Paragraph should, after certain amendments, be transferred to the Convention. Subparagraph (1) absolutely prohibits work defined as prejudicial to the health of the mother and child. In no situation does it give the mother herself a possibility to choose. It would be less discriminatory if the prohibition were directed at the employer instead of the woman, and the Paragraph were amended to the effect that the employee must not be put under the obligation to perform such work. Nor is an absolute prohibition expedient, because prohibited work often includes things that are hazardous or prejudicial during pregnancy, but not after birth.

KT. In Finland, implementation of leave referred to in subparagraph (2), clause (c), would mean the extension of the special maternity allowance scheme to apply to the period after the birth of the child. No need for this has been observed.

PT and TT. Only subparagraph (3), clause (b), is justified with regard to nursing if the intention is that the child not be harmed by its mother's milk. Other clauses hardly bear any relevance to nursing.

AKAVA, SAK and STTK. Transferring this Paragraph to the Convention should be considered, as it has a general formulation and gives plenty of national latitude. Since risk assessment is a fundamental principle in the occupational safety and health of EU countries, its inclusion in the instrument should be seriously considered.

France. Regarding the competent authority in subparagraph (1), express reference should be made to the occupational health physician.

CFDT. Pregnant or nursing women working in areas which pose a risk to childbearing or to the health of a mother and child should be protected.

Germany. This Paragraph is acceptable.

DAG. Health protection should be such that pregnant or nursing women do not incur any loss of income if certain types of work are prohibited on health grounds. Overtime, night work, work on Sundays and shift work should be prohibited for pregnant women and nursing mothers. Exclusions are conceivable, but mothers should not be obliged to do any such work.

DGB. In subparagraph (2), there should be no loss of income and no obligation to work at night or on shifts.

Greece. In subparagraph (1), after "pregnancy", replace the text with "and for a period of 12 months after childbirth".

NHCT. The term "assessment" in subparagraph (2) should be removed, since it is too abstract.

India. Agrees.

Italy. Provisions on health protection should be shifted to the Convention.

CGIL, CISL and UIL. In subparagraph (2), the post to which a woman is transferred should have the same pay. Night work and shift work should be mentioned in subparagraph (3).

Japan. Whether or not a woman is entitled to return to her job or an equivalent job should be a matter for determination of each Member. In subparagraph (4), the wording "when deemed appropriate" should be added before "to return to her job".

JTUC-RENGO. In subparagraph (2), the words "such as night work and shift work" should be added after "or that of the child". The words "without reduction in wages" should be added after "alternative to such work".

Republic of Korea. Agrees to the current placement of subparagraph (4).

Malaysia. MEF. In subparagraph (2), the words "as appropriate" should be deleted. A medical certificate issued by a registered medical practitioner should be required.

MTUC. This Paragraph should also provide that employers should ensure that the workplace, wherever possible, is adapted to be safe for pregnant and nursing women; that there should be no compulsory overtime or night work and that, in the event of leave, there should be no loss of pay.

Malta. There are currently no provisions for the taking of leave as in subparagraph (2), clause (c). However, new draft legislation provides that the employer shall grant a worker an extension of her maternity leave for the whole of the period necessary to protect her safety or health, or that of her pregnancy, or of her child. National legislation does not cover clauses (a), (c) or (d) of subparagraph (3). However, new draft legislation provides that in certain circumstances risk assessment is to be undertaken before work is assigned.

Morocco. UMT. Subparagraph (2), clauses (b) and (c), should each include the phrase "without a reduction in remuneration".

Namibia. NPSM. Delete "competent authority" and replace with "health practitioner" in subparagraph (1). Insert "paid" in front of the word "leave" in subparagraph (2), clause (c). In subparagraph (4), delete "or an equivalent job".

Netherlands. The Government is pleased that risk assessment has been integrated in subparagraph (2).

FNV. Compared to Recommendation No. 95, the health and safety provisions of this Paragraph are a step backwards. To correct this, the phrase "without loss of wages" should be included in the case of a transfer to another kind of work not harmful to her health. A modern rephrasing of the night work provision for pregnant and nursing women could be found in: "No woman should be obliged to do night work or shift work whilst pregnant or nursing."

Norway. This Paragraph concerns a vital right, which should be included in the Convention. The following text should be included as an additional Article in the Convention: "No pregnant or nursing woman should be obliged to perform work defined by the competent authority as dangerous to her health or to that of her child."

Portugal. Agrees with subparagraph (4).

CIP. Does not agree with this Paragraph. Alternatives should be considered on a case-by-case basis. This subject should not be dealt with in the Recommendation.

UGT. This Paragraph should be included in the Convention.

South Africa. The need for subparagraph (1) should be re-evaluated. The nature of health risks for childbearing women varies considerably. It may not always be appropriate to prohibit employment during pregnancy and up to a period of three months after childbirth. In some instances, the threat is greatest in the first months of pregnancy; in others, the prohibition needs to last for a longer time.

Spain. Subparagraph (1) should be drafted in such a way as to establish a system of protection based on risk assessment and the practical implementation of measures designed to avoid risks. If the assessments reveal a risk to safety or health, or a possible repercussion on the worker's pregnancy or nursing, the necessary measures would be adopted, including those contained in subparagraph (2). Prohibiting specific work for pregnant women and nursing mothers, irrespective of the protection in place to counter any risks, is considered to be discriminatory, as it restricts women's employment opportunities and chances of remaining in employment, just as the prohibition of night work for women is discriminatory, irrespective of whether or not they are pregnant or nursing. Subparagraph (2) would be acceptable because it is drafted in terms relating to concrete cases, unlike the general prohibition contained in subparagraph (1). The two possibilities given in subparagraph (2) should be moved to subparagraph (1). This would establish the general principle of health protection, which could be drafted along the following lines: "The employment of a woman on work defined by the competent authority as prejudicial should be prohibited during pregnancy and nursing or where an assessment has established a recognized or significant risk to her health or that of her child." If the work mentioned in subparagraph (3) is likely to involve a risk to the health of the mother and child, a prior assessment should be carried out to determine its nature and degree and the length of exposure of pregnant or nursing workers, in order to assess the existence of any risks and determine the appropriate measures to adopt.

CCOO. A section on health protection should be included in the Convention, as follows:

> 1. A woman shall not be required during pregnancy or the nursing period following birth to do work which according to a medical certificate or the competent authority is prejudicial to her health or that of her child.
>
> 2. In such cases, measures appropriate to national conditions shall be taken to adapt the woman's post or to allow her to change posts or, if neither of these measures is possible, to allow her a period of leave with full pay.

The decision to put these paragraphs near the beginning of the Convention would reflect the fact that health protection should take precedence over other provisions. A new Paragraph on "Health protection" should be included in the Recommendation as follows: "Members shall take measures to establish, in cooperation with international organizations and in consultation with the representative organizations of workers and employers, procedures and standards for assessing the risks to the reproductive health and safety of men and women workers."

UGT. Agrees to the proposed placement of subparagraph (4).

Sweden. The two following paragraphs regarding the protection of health of mother and child should be placed in the Convention:

> 4. No pregnant or nursing mother shall be obliged to perform work defined by the competent authority (national laws and regulations) as dangerous to her health or to that of her child.
>
> 5. When the woman's work is defined as dangerous to her health or to that of her child, working conditions shall be altered so as to eliminate the risk or the woman shall have the right to other duties.

SAF. Article 7 of the proposed Convention already provides that a woman may not be dismissed on grounds of pregnancy or maternity leave. This being so, it is unnecessary to stipulate that the employer in such a case shall alter her working conditions or offer her other duties.

Switzerland. See comments on Article 3, paragraph 1, of the proposed Convention.

USS/SGB. Where subparagraph (2) applies and appropriate measures are taken, the relevant guarantee provided by the Convention should apply. There should be no obligation for pregnant or nursing women to do night or shift work.

Togo. CSTT. In subparagraph (2), add "or other appropriate certification" after "medical certificate".

United States. The government should not decide whether the position held by a woman is prejudicial to her health or that of her child. That decision should be made by a woman in consultation with her physician. Additionally, a woman should not be prohibited from making her own decisions as to whether to work and when to work. Subparagraphs (2), (3) and (4) are supported.

USCIB. Subparagraph (4) should be amended to make clear that job rights are subject to the availability of the position.

Uruguay. PIT-CNT. Compared to Recommendation No. 95, this Paragraph is less detailed, and the specific right to a transfer for maternity-related reasons is not maintained. These are negative aspects of the proposed Recommendation.

Zimbabwe. This Paragraph is fully supported.

Office commentary

There was very broad acceptance of the importance of health protection for woman and child. Many governments and workers' organizations proposed that the Paragraph, or part of it, be moved to the Convention, with the modifications necessary in view of its inclusion in a Convention. In this context, it was pointed out that the rights to health protection contained in the Paragraph were already formulated in quite general terms, providing a degree of national flexibility in implementation. Some suggested moving only the general statement of principle, currently contained in subparagraph (1), into the Convention. Very few comments were received from employers' organizations on the subject of health protection and these dealt with various details of the provisions concerning implementation.

Several suggestions were received concerning the expression of the statement of principle in relation to health protection. A number of respondents considered that the current approach, that of prohibiting a woman from being employed on work prejudicial to her health or that of her child, was not the most appropriate way to ensure health protection of pregnant and nursing women. Instead, they proposed, the employer should be prohibited from requiring a pregnant or nursing woman to perform work that was prejudicial to her health or that of her child. The woman would therefore not be obliged to perform such work, but neither would she be prohibited from choosing to do so. This also brings into question the authority for determining whether particular work is dangerous to the health of the woman or child. In this regard, one respondent considered that the determination should not be made by the government (as the competent authority), but rather by the woman herself, in consultation with her physician. Another proposed that express reference be made to the role of the occupational health physician, while a third suggested replacing "competent authority" by "health practitioner". On the other hand, another respondent queried the need for a provision prohibiting employment of a woman on work prejudicial to her health or that of her child, on the basis that the health risks may not be the same at different stages of pregnancy, or for pregnant and nursing women.

A number of respondents suggested that the period of prohibition of work that was prejudicial to the woman's health or that of her child should be extended. One government proposed that the period be extended from three months after childbirth to three months after the end of maternity leave, while another proposed extending the period to 12 months. Several other governments and workers' organizations, advocating that the provision be moved to the Convention, wished for the period of protection to be extended for as long after childbirth as the woman is nursing her child.

Many workers' organizations proposed that, in addition to the general prohibition of work prejudicial to the health of the woman or child, specific provision be made to the effect that pregnant or nursing women should not be obliged to perform work at certain times. The most frequently cited examples were night work and shift work; some respondents also suggested that overtime and work on Sundays should not be required of pregnant and nursing women. It might be noted that, to the extent to which these working time arrangements are considered in a country to cause a risk to the health of mother or child, an alternative to such work should be provided under subparagraph (2).

In view of the comments received, the Office has reformulated subparagraph (1) so that it no longer refers to a prohibition for the woman, but rather provides that she should not be obliged to perform work that may place her health or that of her child at risk. Furthermore, the reference to such work has been changed to refer to the different circumstances that could apply in such cases: the competent authority might have made a determination concerning certain types of work, or there might be a recognized risk to the health of mother and child concerning certain types of work, or, in the particular case, an assessment might have established a significant risk to the health of the woman or to that of the child. Finally, the period of protection has been reformulated, so that the protection applies to a woman who is pregnant or nursing.

Many governments and workers' organizations were insistent that a modern Convention on maternity protection should address the issue of protection of the health of mother and child. This viewpoint was evident in the general observations as well as in the comments directly dealing with this Paragraph. If it were decided to move the provision concerning health protection into the Convention, it would be necessary to create a new heading and to ensure that the provision was formulated in terms that would be least likely to pose unnecessary obstacles to ratification. However, this must be a matter for the Conference to determine.

The issue of risk assessment, which was inserted into the Paragraph as a result of an amendment adopted by the Committee in the first discussion, elicited differing views. Some respondents welcomed its inclusion and noted that risk assessment is a basic principle of the approach to occupational safety and health in the European Union. One government viewed the general prohibition against specific work for pregnant women and nursing mothers as discriminatory and cautioned that it would restrict women's employment opportunities and their chances of remaining in employment. It therefore preferred a system of protection based on risk assessment. On the other hand, one respondent found the reference to an assessment in subparagraph (2) to be too abstract.

Several comments were received on various aspects of the provision, in subparagraph (2), specifying that alternatives should be provided to prohibited or dangerous work. One reply emphasized that medical certification would be necessary to justify the provision of alternatives to such work: the proviso "as appropriate" should therefore be deleted. Another reply from an employers' organization went further, putting forward the view that this issue should not be covered in the Recommendation, since the need for alternative duties for pregnant or nursing women should be considered on a case-by-case basis. An opposite viewpoint was expressed by a workers' organization, which considered that employers should have a general duty to ensure that the workplace was adapted wherever possible to be safe for pregnant and nursing women. Several workers' organizations and one government mentioned the importance of ensuring that there was no loss of remuneration in the event that a woman was given leave or transferred to another post because of health concerns. On the other hand, an employers' organization considered that the provision for leave, in situations where adaptation of the conditions of work and transfer to another post were not feasible, amounted to an unnecessary extension of the maternity benefits system after childbirth.

The listing in subparagraph (3) of types of work that particularly warrant measures to provide alternative work was generally not commented on. One respondent considered that of these, only the work specified in clause (b), involving exposure to biological, chemical or physical agents which represent a reproductive health hazard, was relevant to the situation of nursing mothers and their babies if the intention was that the child not be harmed by its mother's milk. However, it should be noted that other types of work specified in subparagraph (3) could also affect a mother's capacity for nursing, and that in addition the paragraph applies to pregnant women as well as nursing mothers.

Only a few comments were received on the change made by the Office to place the provision that "the woman should retain her right to return to her job or an equivalent job as soon as it is safe for her to do so" in subparagraph (4). Most of these supported the change, although a government wished to insert the qualifying condition "when deemed appropriate" so as to leave this issue to be decided by each Member, while one employers' organization proposed that this right should be subject to the availability of the position. A workers' organization, on the other hand, preferred to delete the words "or an equivalent job", so as to give the woman an absolute right to return to her job. One respondent suggested that the words "Where any of the above measures have been applied" should be inserted at the beginning of the subparagraph, but this seems unnecessary, since the subparagraph could not be understood to mean anything else. Some drafting changes have been made in the French and English texts to better align them.

One respondent proposed that the current provisions be moved to the Convention and that a new provision be inserted in the Recommendation to allow pregnant women and nursing mothers employed in workplaces and construction sites to lie down and rest in suitable conditions. Another, which also sought to transfer part of the current provisions to the Convention, suggested a new provision in the Recommendation specifying that procedures and standards should be established for assessing the risks to the reproductive health and safety of men and women workers. The Office has not incorporated this suggestion, which would seem to go beyond the scope of maternity protection.

NURSING MOTHERS

8. Where practicable and with the agreement of the employer and the woman concerned, it should be possible to combine the time allotted for daily nursing breaks to allow a reduction of hours of work at the beginning or at the end of the working day.

Observations on Paragraph 8

Argentina. UIA. Article 9 of the Convention should be transferred to the Recommendation and included in this Paragraph. The proposed text is totally inappropriate, since it allows the accumulation and combination of nursing breaks at the worker's convenience in a manner not strictly related to the needs of the child.

Bahrain. Nursing breaks should not be combined, as the purpose of establishing them was to protect recurrent needs of the child, which precludes accumulating such breaks.

Belarus. Combining the time allotted for daily nursing breaks to allow a reduction of hours of work at the beginning or at the end of the working day does not serve the stated purpose of such breaks, namely that of feeding and caring for a child during the day.

Benin. CNP-BENIN. This Paragraph is not acceptable. Accumulating and combining nursing breaks would not benefit the child and would certainly create difficulties for employers.

Canada. CEC. Refer to the comments made on Article 9 of the proposed Convention.

Czech Republic. CMK OS. Paragraphs 8 and 9 of the proposed Recommendation should be moved to the proposed Convention to become paragraphs 3 and 4 of Article 9.

Denmark. DA. Article 9 of the Convention should be moved to the Recommendation. Paragraphs 8 and 9 on further rights concerning nursing are inappropriate.

Ecuador. Agrees.

Egypt. Agrees.

El Salvador. Compliance would require a reform of national labour legislation.

France. Combining nursing breaks to reduce the length of the working day seems unacceptable, as it conflicts with the very purpose of the nursing break, which is to enable the mother to feed her child on a regular basis.

MEDEF. Allowing mothers to combine nursing breaks in order to permit an overall reduction in working hours is hard to reconcile with the basic objective of nursing breaks.

Germany. It is important to ensure that the child's need for regular nourishment continues to be met.

BDA. Such a provision makes little sense if one considers the actual nature and purpose of nursing. Above all, combining nursing breaks does not ensure any permanence or continuity in the supply of nourishment to the child. Paragraph 8 should therefore be replaced by a provision corresponding to Article 9 of the Convention.

India. The proposed text on adjustment of daily nursing breaks is impracticable.

HMS. It is important to adhere to the provisions in Paragraphs 8 and 9.

Republic of Korea. KEF. This Paragraph should be deleted. As many enterprises are adopting team systems to carry out their business and team members should work together at the same time on the same project, reduction of working hours is very difficult. Moreover, female workers may abuse such combinations of nursing breaks. Combination of nursing breaks for a reduction of working hours should be left to Members on the basis of national laws and systems.

FKTU. Move this Paragraph to Article 9 of the proposed Convention.

Malaysia. Nursing breaks can be arranged between the employee and employer themselves.

MEF. This Paragraph should be deleted.

Malta. No legal provisions exist.

Portugal. CIP. In line with its views on Article 9 of the proposed Convention, the CIP disagrees with this Paragraph. Only breastfeeding should be taken into account.

Slovakia. Paragraphs 8 and 9 on nursing mothers should be transferred to Article 9 of the Convention.

South Africa. BSA. The proposed wording is totally unacceptable, as it would allow women workers to accumulate and combine nursing breaks to suit their own convenience in ways unrelated to the purpose of nursing a child and would be difficult to apply in practice. This kind of approach could be a disservice to women of childbearing age, as it could impact on their employability in many countries. It would furthermore be very costly and would impact negatively on job creation efforts. BSA strongly recommends that this Paragraph be deleted.

Switzerland. UPS. This Paragraph is unacceptable in its present form, as it allows women workers to accumulate and combine nursing breaks to suit themselves. It no longer relates to the problem of nursing, but constitutes a roundabout way of reducing working time, and would best be replaced by Article 9 of the proposed Convention.

United Republic of Tanzania. Should be included in the Convention. The binding nature of the Convention could easily force Members to put its provisions into practice.

Turkey. TİSK. Article 9 of the proposed Convention should be placed in the Recommendation.

United Kingdom. The Government has some questions about the operation of the provision, but notes that such arrangements are subject to their practicality and agreement between the employer and woman concerned. (See also comments on Article 9 of the Convention above.)

United States. Supports this Paragraph.
USCIB. The nursing break recommendation made here does not relate to the need to nurse the child, but rather to achieving a shorter workday. It should be deleted.

Zimbabwe. This is the current practice in Zimbabwe, hence there are no difficulties in implementing this Paragraph.

Office commentary

As noted above in the Office commentary on Article 9, in response to the comments received on Article 9, paragraph 2, of the Convention concerning the adaptation of breaks to particular needs, the Office reformulated the provision and moved it to the Recommendation as Paragraph 8. In line with the change of heading in the Convention to "Breastfeeding mothers", the heading in the Recommendation has also been changed.

The former Paragraph 8, now renumbered as Paragraph 9, which provides for the combination of the time allotted for nursing breaks to allow a reduction of hours of work at the beginning or end of the working day, was very strongly criticized by employers' organizations. Many of these considered that the provision did not serve the stated purpose of nursing breaks, which in their view was to feed and care for the child during the day. They expressed concern that the provision was a roundabout way of reducing working time and thus subject to abuse, rather than a provision related to the problems of nursing. Some also argued that it would be difficult to apply in practice and could have a negative impact on job creation and in particular on the employment of women of childbearing age. It was specifically mentioned that reduction of working hours in such cases became very difficult as more enterprises adopted systems of teamwork that required team members to work together at the same time. They therefore proposed the deletion of the Paragraph.

Amongst the government responses, several agreed with the employers' organizations that it was difficult to reconcile this provision with the basic objective of nursing breaks – to feed the child during the day. One noted that implementation would require reform of national labour legislation, whereas another indicated that the provision reflected current national practice. One government had some questions about the operation of the provision, but noted that arrangements would be subject to their practicality and to agreement between the employer and woman concerned. Two responses proposed that the provisions in the Recommendation concerning nursing breaks be transferred to the Convention.

While it is clear that the provision does not enjoy a tripartite consensus, no suggestions were put forward that would be more likely to achieve such a consensus. The Office, noting that this provision is placed in the Recommendation and that the combination of nursing breaks is stated to be subject to practicality and to agreement between employer and worker, has left the text unchanged.

9. Where practicable, provision should be made for the establishment of facilities for nursing under adequate hygienic conditions.

Observations on Paragraph 9

Argentina. UIA. The establishment of "facilities for nursing" could be interpreted as meaning that all employers, irrespective of the size of the enterprise or composition of the workforce, must have nursing facilities of an adequate hygienic standard, in which case fewer member States would be able to ratify the Convention.

Bahrain. The idea of setting aside nursing areas may seem inappropriate, as it would be better to have nurseries to care for the child's needs, including feeding, during this period of its life.

Benin. CNP-BENIN. The establishment of nursing facilities poses difficulties for small and medium-sized enterprises and industries and for developing countries.

Brazil. FS. This Paragraph should be amended to read: "depending on the size of the enterprise and in compliance with domestic legislation, employers should provide adequate facilities for nursing mothers on the workplace premises" and be moved to the Convention.

Ecuador. Agrees.

Egypt. Agrees.

El Salvador. Compliance would require a revision of national labour legislation.

Finland. KT. Given the length of maternity leave in Finland, there is no need to arrange for childcare rooms at workplaces.

Germany. Taken with the proviso "where practicable", the provision is acceptable.
BDA. Providing for the establishment of facilities for nursing under adequate hygienic conditions can pose a problem for many small and medium-sized firms. Adopting such a provision makes little sense because children are usually looked after somewhere outside the workplace.

Ghana. GEA. Nursing facilities for nursing mothers should be the responsibility of women's groups or communities and not employers. This would encourage the employment of women.

India. Agrees.

Japan. JTUC-RENGO. Facilities for nursing should also cater for the pumping of milk for those mothers who prefer to take milk home.

Malaysia. MEF. This Paragraph should be deleted.

Portugal. CIP. This should be a matter for national legislation.

Spain. CCOO. Replace this Paragraph as follows: "Provision should be made for the establishment of nursing and childcare facilities, preferably outside the workplace; wherever possible, provision should be made to ensure that such facilities and childcare are financed, or at least subsidized, collectively or through a compulsory social security scheme."

Thailand. ECONTHAI. Such facilities can be provided only by large establishments with a large amount of operating funds. An establishment which runs nursing facilities within its compounds runs a risk of both criminal and civil penalties. Few establishments would take such a risk, unless there were severe shortages of workers.

United States. Supports this Paragraph.

Zimbabwe. Supports this Paragraph.

Office commentary

Few comments were received about the establishment of nursing facilities. Several employers' organizations proposed deleting the provision, pointing out that it was difficult for small or medium-sized enterprises and for enterprises in developing countries to provide facilities for nursing under hygienic conditions. In any case, they said, children were mostly looked after outside the workplace. One organization suggested that nursing facilities should be the responsibility of women's groups and communities rather than employers. There was also a risk, according to one, of civil or even criminal penalties as a result of operating such facilities. One employers' organization claimed that in their country, the period of maternity leave was long enough to obviate the need to provide nursing facilities at the workplace.

The majority of governments that commented on this Paragraph found it acceptable. One noted that the qualifying phrase "where practicable" provided sufficient flexibility. On the other hand, one government found the proposal to be inappropriate, while another said that reform of the national labour legislation would be required to bring it into line with Paragraph 9.

Few comments were received from workers' organizations. These generally supported the provision and one suggested that it should be redrafted in more flexible language and moved to the Convention. While that organization favoured workplace nursing facilities, another workers' organization preferred that the text promote the establishment of facilities outside the workplace. It also suggested that, wherever possible, these facilities should be financed or subsidized collectively or through a compulsory social security scheme.

In view of the fact that few comments were received and that a clear majority view did not emerge, the Office has left the Paragraph (now renumbered Paragraph 10) unchanged except for a drafting change in the French text, to align it better with the English.

RELATED TYPES OF LEAVE

10. (1) The employed woman or the employed father of the child should be entitled to parental leave during a period following the expiry of maternity leave.

(2) The period during which parental leave might be granted, the length of the leave and other modalities, including the payment of parental benefits, the use and distribution of parental leave between the employed parents, should be determined by national laws or regulations or in any manner consistent with national practice.

Observations on Paragraph 10

Argentina. UIA. The proposed instruments should not cover adopted children. This text goes far beyond the basic purpose of ensuring maternity protection and should be deleted.

Austria. BAK. Basic maternity leave entitlements (leave, cash benefits and employment protection) should be extended to adoptive parents.

Bahrain. Leave for the employed father is contrary to national practice and is not considered necessary given the existence of nurseries in establishments.

Barbados. National legislation follows a maternity protection approach. Parental leave is addressed in the collective bargaining process and is not restricted to cases of maternity.

Belarus. The Recommendation should extend fundamental maternity protection rights to adoptive parents, as this promotes the assimilation into families of orphans and children who would otherwise be deprived of parental care.

Belgium. Favours maternity leave with the main objective of protecting the health of mother and child. If parental leave – to include maternity leave – were opted for, the basic philosophy behind this leave would be altered. There are other Conventions – namely the Workers with Family Responsibilities Convention, 1981 (No. 156) – that might be more appropriate for the introduction of provisions relating to the right to leave for adoptive parents.

CNT. Parental leave should only be included in the Recommendation.

Brazil. Extending maternity protection rights to adoptive parents is controversial in a Recommendation which establishes provisions specific to biological mothers who undergo pregnancy and childbirth. This matter, like parental leave, should be addressed in another instrument not designed to deal solely with maternity protection. It could be taken up in connection with Convention No. 156, and Recommendation No. 165.

The right to parental leave is related to maternity protection in that they both ensure equal employment opportunities between men and women and the avoidance of discrimination. When parental leave applies to both sexes, employers must deal with the fact that their women workers will have a right to leave and that, on the basis of non-discrimination, such leave must be accorded to men as well.

Canada. The wording of this provision could be modified to ensure that adoptive parents of children of a certain age would be covered under provisions for parental leave.

CEC. Allowing adoptive parents to take advantage of parental leave does not pose any specific problems, but the CEC is not in favour of extending maternity leave to adoptive parents, as this would go against the essential purpose of maternity leave, which is to protect women who are pregnant or in the post-partum phase. To extend maternity leave beyond pregnancy, confinement and nursing would weaken the scope of the instrument and neglect the physiological consequences for women who bear and nurse children. In the case of adoption, parental leave serves this purpose. The wording of subparagraph (1) should be amended, as the terms "employed woman" and "father of the child" are not parallel and should be comparable. Benefits payable during parental leave should not be identical to those of maternity leave.

Chile. There are no substantive reasons to justify not applying the Convention to adoptive mothers or their children, as its purpose is to protect maternity, irrespective of whether its origin is biological or not.

China. At the end of subparagraph (1), add "or the member State should allow the employed woman and her spouse to take maternity-related leave according to national law".

Croatia. The Recommendation should include provisions on adoptive parents' rights.

Czech Republic. CMK OS. In subparagraph (1), replace "of the child" with "or both employed parents".

Denmark. It is adequate that the Recommendation extend to adoptive parents all rights provided for in the Convention with respect to the postnatal period of maternity. The ILO should as soon as possible take the initiative to prepare a Convention on parental leave and fathers' rights in connection with birth.

DA. Both instruments should concentrate on protection of maternity. Family policy standards should be omitted, especially when covered by other ILO instruments.

Ecuador. Does not support the inclusion of a provision extending main maternity protection rights, such as rights to leave, benefits and employment protection, to adoptive parents, since this would be detrimental to the purpose of both instruments and could lead to failure to implement them or non-ratification.

Egypt. Such leave would be contrary to national religious practice, customs and tradition that make childcare the responsibility of women.

FEI. Paragraph 10 is contrary to national legislation that provides for childcare leave only for the mother, but not the father.

Estonia. An adoptive mother should have the right to maternity leave at the adoption of every child, including those older than one year.

EATU. Supports this approach. Supports a parental leave right for both parents.

Finland. Especially regarding maternity protection rights concerning leave, financial benefits and employment security, the needs of the child and the parents are the same, irrespective of whether parents are biological or adoptive, and both kinds of parents should be placed in the same position. Where rights concerning parental leave do not overlap with rights concerning maternity leave, the inclusion of parental leave provisions in the Convention should not cause impediments to ratification. Parental leave does not impose more obligations on the employer than maternity leave. Since men usually have higher salaries and wages than women, financial compensation by society may be higher when men use parental leave; however, the effect on national economies would not be significant. It is more important for parents to have a possibility of deciding freely among themselves how they would take care of their child when maternity leave is no longer necessary to the health of the mother.

PT and TT. Since both instruments concern maternity protection, parental leave provisions should be omitted from the Recommendation. They are already included in Recommendation No. 165, a more appropriate instrument.

France. Adoption is not eligible for the same degree of protection as pregnancy, as such protection should commence only as of the time of the child's arrival in the home of the adoptive parents. Amendments would appear to be needed to establish provisions concerning adoption and their application to adoptive mothers. The heading "Related types of leave" seems to have little to do with the content of Paragraphs 10 and 11 since parental leave referred to in Paragraph 10 is distinct from maternity leave; and the transfer of maternity leave to the father in certain circumstances is merely a rearrangement of maternity leave and does not constitute a new, "related" type of leave. Parental leave is fundamentally different from maternity leave. Open to both men and women, it is concerned with reconciling family life with working life, not with the protection of mother and child during pregnancy and childbirth, and therefore seems to be beyond the scope of the proposed instrument.

MEDEF. Types of leave other than maternity leave have no place in an instrument dedicated to maternity protection at work. All other types of family leave (adoption, parental leave, to care for a sick child, etc.) should be dealt with in a specific instrument.

CFDT. By voting for this provision in a non-binding Recommendation, the Conference would acknowledge the importance of adoption and that the arrival of an adopted child, like a birth, requires particular measures to protect the health of the adopted child and its mother. A period of paid leave for adoption is necessary.

Germany. Maternity protection at work does not apply to adoptive mothers and, in view of national legislation, any compulsory inclusion of adoptions in the scope would pose an obstacle to ratification. The Convention is concerned with regulating maternity protection in terms of the particular protection needs of a mother after childbirth, and does not have the slightest connection with the subject of adoption. Including rules on parental leave in a Recommendation supplementing a Convention entitled "Maternity protection at work" is, strictly speaking, inappropriate. It would make more sense for this subject area to have its own set of standards. However, to encourage this approach, which is basically positive, the Government can tolerate a Recommendation.

BDA. The distinction between maternity protection (health grounds) and parental leave (bringing up the child and equal opportunity issues) is important. Since the subject area of the Recommendation is maternity protection (protection of the mother) and parental leave is dealt with in Paragraph 22 of Recommendation No. 165, Paragraph 10 should be deleted.

DGB. The heading "Related types of leave" preceding Paragraph 10 should be replaced by "Additional leave of absence". This Paragraph should remain in the Recommendation. In the future, a Convention should be adopted which strengthens the rights of parents at work and gives men and women more equal status with regard to child rearing.

Ghana. GEA. Childcare in Ghana is primarily the responsibility of the mother, with the father providing assistance. The parental leave approach might receive support only if no pecuniary responsibilities were placed on the employer.

Guatemala. Both instruments should refer only to maternity protection and not be extended to parental leave, as this would make it difficult for this and other governments to ratify. This Paragraph should be deleted.

India. The question of parental leave should be considered only after maternity-related provisions are fully implemented. There is little need in India to provide for compulsory parental leave, because employed fathers usually are entitled to paid leave for their emergency needs.

HMS. It would be appropriate to include in the Recommendation a provision which would extend maternity protection rights to adoptive parents. Rights related to biological pregnancy may not be applicable to adoptive parents, but adoptive parents may require leave of a different nature, e.g. taking into consideration the age of the child adopted. The understanding of nursing breaks should expand beyond breastfeeding, which is valid only for biological mothers. Adoptive parents would require "nursing breaks" to feed infants as much as biological mothers. There is no conflict between maternity protection and the need to provide parental leave on the expiry of maternity leave. On grounds of childcare and creating equality between men and women, it is desirable that parental leave be provided, which may help to change stereotypical notions of men's and women's work.

Italy. Agrees with use of parental leave by the father as an alternative to leave for the employed mother.

CGIL, CISL and UIL. It is appropriate and timely to call upon governments to express their views, particularly about the possibility of extending to cases of adoption substantive rights with regard to leave, benefits and guaranteed employment. Maternity protection and parental leave are matters which call for two different levels of attention to children's well-being, and are not in conflict, but rather on a graduated scale so protection can be extended to cover all women workers.

Japan. Paragraphs 10 and 11 should be deleted. The measures described relate more to childcare and are not inherently related to maternity protection. These issues should be considered in relation to Convention No. 156 and Recommendation No. 165.

JTUC-RENGO. Such types of leave are supported. Paragraphs 10 and 11 concern Convention No. 156 and Recommendation No. 165, which should be revised as soon as possible.

Jordan. ACI. National traditions, customs and social rules do not accept the principle of adoption. Providing maternity leave to either parent is foreign to Jordan's society.

Republic of Korea. KEF. Such protection should be covered by other ILO Conventions. The Paragraph should be deleted.

Lebanon. The matter of paternal leave for the father should be left for Members to decide upon. With regard to adoption, the age of the adopted child should be taken into account when deciding on types of protection for both mother and child. Maternity leave need not be divided in cases of adoption. Medical care could be provided for the adopted child as well. Job security should be the same in cases of adoption and childbirth. Concerning parental leave, the Convention should deal primarily with maternity protection and other related types of protection for women. It may be difficult to lay down equal conditions for women and men regarding the various responsibilities arising from childbirth and childcare.

Malaysia. MEF. The paragraph should be deleted, as it ventures to widen the scope of maternity protection to include the father of the child and to give parental benefits which are outside the scope of maternity protection.

MTUC. Parental leave should be promoted, since working mothers must return to work after confinement, and it would give fathers and mothers the chance to better appreciate the arrival of their newborn child and be better parents. Extended parental leave should be given in the event of a caesarean section or difficult birth. Parental leave after confinement would also promote continuity of parents' responsibility towards the well-being of a child.

Parents should be entitled to take leave of a duration equal to the portion of the compulsory leave, in the case of an adopted child, and during the sickness or hospitalization of the child. Any working mother who wishes to take paid or unpaid leave in order to take care of a sick child or to give full attention to the growth and welfare of a newborn child should be allowed to do so without hindrance, and with security of employment.

Malta. Parental leave is available to workers in the public sector only.

Netherlands. Maternity leave is clearly different in nature from adoption leave and parental leave, neither of which includes the mother's physical recovery as a factor. There is no rationale for transferring components of maternity protection directly to adoption and parental leave. Regulation of adoption and parental leave in the Recommendation would need to be elaborated in the light of the specific characteristics of these two types of leave. There is a risk that ratification of a Convention would be made more difficult if parental leave provisions were included, even if under an optional part.

VNO-NCW. The aim of both instruments is to give minimum standards for maternity protection. Introduction of other types of leave is opposed. Parental leave is dealt with in another ILO instrument.

New Zealand. NZEF. Neither the Convention nor the Recommendation should cover parental leave or adoption, as this would greatly extend their ambit. "Maternity protection" applies to women who are pregnant and those who have given birth. Women may choose, following the birth, to return to work and have a partner or some other person care for the child, but that is not the situation to which the Convention is directed. For there to be any likelihood of ratification, both the Convention and the Recommendation must limit themselves to protecting pregnant women and those who have recently had a child (or children) should they choose to take leave from their paid employment.

NZCTU. Maternity and parental leave rights for adoptive parents should be in the Convention. Parental leave is complementary to maternity protection but not comparable with it. The proposed text of the Convention acknowledges this and takes a balanced approach to the realities of maternity while providing support for parental leave.

The Convention should not include a deemed compliance provision to address perceived differences between maternity and parental leave approaches. Any deemed compliance provision would require an agreed mechanism to compare rights and to allow some trade off of rights. At present, there is no way for women to freely trade off the burdens of pregnancy and childbirth. The male partner may plan to take extended paternity leave to enable his female partner to return to her work soon after the birth, but if complications arise, it might be physically impossible for the woman to do so. A woman needs maternity protection. The availability of an extended generous parental leave right does not remove that need. Any benefits of a deemed compliance provision are outweighed by the risk of undermining necessary maternity protection.

Philippines. Extending the rights to adoptive parents may entail difficulties, but it would be fair to reserve provisions for this purpose.

Poland. National legislation does not provide for parental leave, as in Paragraph 10. However, this year it should be fully harmonized with EU Council Directive 96/34/EC on the framework agreement on parental leave.[25]

Portugal. Regarding adoption, the Recommendation could contain a provision to extend the right to benefits and employment protection to adoptive parents, applicable to both men and women without discrimination. The protection of adoption would apply only in those countries where domestic legislation makes provision for it. Adoptive parents, men and women, also need protection so as to avoid discrimination, but if this is included it would be harder for some countries to ratify. Some parental and adoption protection rights could be included under Part II of the Convention, ratification of which would be optional. Part I would be restricted to the health protection of the mother and biological child. The existing instruments are being revised to facilitate future ratification of the new versions in order to extend the protection they offer as far as possible. Convention No. 156 already establishes some rights for fathers in that situation and, in such circumstances, the Government agrees that Convention No. 103 should apply only to mothers.

CIP. Given the social and cultural diversity among Members, this matter should be referred to domestic legislation.

CAP. There should be no reference to adoption in either instrument. These must be as universal as possible, hence no controversial topics should be included.

UGT. The Recommendation should include standards concerning other forms of leave, such as childcare leave, and establish guidelines for reducing working hours. It must include provisions to enable paternity leave to be taken as agreed between the parents within the non-compulsory period of maternity leave and to extend its scope to the children of the spouse or the person with whom the male or female worker is living as a de facto couple. The Convention must include a provision whereby rights are extended to adoptive parents.

Qatar. Maternity leave is linked to pregnancy, childbirth and their consequences, and belongs to the mother. Cash benefits are also linked to pregnancy and childbirth, and should be paid to the mother. The parental leave proposed in Paragraph 10 should not carry with it entitlement to cash benefits. If assistance is needed, it should be given through social security or social assistance. There are practical difficulties that preclude fathers from being entitled to such leave. The inclusion in the Recommendation of a provision on adoption and consequent entitlement to leave, benefits and employment protection is controversial. Adoption involves no pregnancy, childbirth or nursing. Furthermore, if childcare requires leave, the question is for how long. Adoptive parents are usually well off and in a position to provide care for the child.

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[25] Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.

Russian Federation. The purpose of the Convention is to provide health protection and employment security for women workers during pregnancy, childbirth and following childbirth, and to protect women from discrimination. Protecting the rights of adoptive parents is important, but is not directly related to the birth of a child and does not require special health protection measures or convalescent leave. Special measures to protect the health of adoptive parents do not need to be considered. However, either the mother or father should be granted a period of leave to care for the child until the latter reaches a certain age. This leave should be paid and subject to the same guarantees of job security as are enjoyed by women who have given birth.

Slovakia. Recommends that the text of Paragraph 10 be consistent with EU Directive 96/34/EC concerning parental leave and provide that the father shall be entitled to parental leave as of childbirth.

South Africa. This provision is supported. A clause should also be included to provide for adoption leave, particularly in the case of younger children, as determined by national law and practice. This leave should be provided on the basis of adequate proof of adoption and not be exchangeable for other forms of leave. The clause should not attempt to extend certain of the rights given to natural mothers to adoptive mothers.

BSA. The instruments are geared towards the protection of maternity. Paragraphs 10 and 11 should be deleted since they concern other types of leave which are covered by other ILO Conventions.

Spain. CCOO. The scope of rights to be extended to adoptive parents, at least regarding the leave period, should be acknowledged in the Convention, with a clause exempting countries where adoption is not legally possible. If the proposal is not accepted, the matter should still be dealt with in the Recommendation. Regarding parental leave, the Convention should contain two parts, the second part being optional and dealing with this type of leave. There is no incompatibility between the parental leave and maternity protection approaches, provided that care is taken to define different and separate rights and protection for fathers and mothers.

UGT. Considers it appropriate to place the rights of natural parents on an equal footing with those of adoptive parents. Agrees with the text if the Convention is restricted to aspects of health and employment rights of women directly connected with maternity. If it is possible to extend the Convention to cover childcare, it should also be extended to cover male wage earners, in accordance with the principle of equality of opportunity.

Switzerland. UPS. Paragraph 10 should be deleted. Such leave has little to do with maternity protection.

Syrian Arab Republic. Does not recognize adoption. National legislation based on the sacred Islamic law, the sharia, contains no provisions on the matter. The protection of maternity when a woman returns to work and the protection of the health of mother and child are endorsed, but not the policy calling for parental leave for both parents, gender equality and sharing responsibility between parents for child rearing, which are contrary to national legislation.

Thailand. ECONTHAI. Maternity leave is already an expense for establishments. Parental leave would impose further expenses. Where both parents work for the same establishment, that establishment will be even less inclined to accord leave to the father apart from his right to leave for personal business, sickness or vacation. The same rule should be applied even where the parents work for different establishments and where the father takes leave to care for the child owing to the mother's delivery, death or illness.

Tunisia. The new instruments should be based on a maternity protection approach. The parental leave approach is not compatible with the main objective or even the title of the instruments. Parental leave to promote equality between men and women and the sharing of childcare responsibilities is already covered by Paragraphs 22, 23 and 24 of Recommendation No. 165. Most member States emphasize maternity protection in their national law and practice. New parental leave provisions in the proposed instruments could well constitute an obstacle to ratification. Parental leave could be dealt with in a separate instrument, along the same lines as paid educational leave (the Paid Educational Leave Convention, 1974 (No. 140)), or left to national legislation. Maternity protection rights should not be extended to adoptive parents. Such a measure would become an obstacle to ratification, given the different positions of member States on the issue. It would entail additional costs and create difficulties for social security agencies, especially in developing countries.

Turkey. TİSK. The Recommendation and the Convention are geared towards the protection of maternity. This should not be confused with other types of leave which are covered in other ILO Conventions. Does not support the idea of a new discussion on the issue of adoption. Provisions regarding the protection of adoptive children or adoptive mothers should be left out of the Convention.

United States. Modification of the Convention to extend coverage to adoptive mothers is supported. Working women need the securities and protections provided under this Convention if they become mothers, either through adoptive or through biological means. Although some countries have difficulty with the concept of adoption, as it violates their religious or cultural beliefs, to exclude these women from the protections offered under this Convention and Recommendation would be unjust and unwise. Their inclusion comports with the ILO's objective to provide employment protection for women who bear the dual responsibilities of wage earner and parent. In the spirit of non-discrimination expressed in the Convention's broad definition of women, adoptive mothers should be entitled to the same rights as biological mothers. There are comparable leave needs for adoptive mothers, especially if the child suffers from physical, emotional or medical problems. An adoptive mother should be entitled to leave during the initial stage of placement in order to assess and provide for the "health of the child", as well as to begin the critically important bonding process. The Government supports the inclusion of language giving parental leave to fathers, both biological and adoptive, to care for their newly born or newly adopted children. This principle should be reflected in the Convention. Paragraph 10 as presently drafted is supported.

USCIB. This Paragraph is beyond the scope of maternity leave and seeks to introduce a family leave concept into the Recommendation. It should be deleted.

Venezuela. CODESA. The rights in question should be extended to adoptive parents, in accordance with their needs and existing legislation. Leave should be granted to both the mother and the father, especially during the postnatal period (and when required during the prenatal period). Men should bear their share of responsibilities and be entitled to participate in the care of their children. This would promote respect for the gender and reproductive rights of men and women, which have been the focus of such international events as the International Conference on Population and Development (Cairo, 1994) and the Fourth World Conference on Women (Beijing, 1995).

Zimbabwe. Supports this Paragraph.

Office commentary

Responses on the subject of parental leave were mixed, with workers' organizations and a substantial number of governments supporting the provision, but most employers' organizations and an even greater number of governments opposing it. Those who supported the provision argued that parental leave for both parents should be promoted as a means of improving gender equality and of encouraging and helping men to bear their share of responsibilities in the care of their children. Many of these replies explicitly recognized that parental leave was a separate issue from the protection of the mother's conditions in connection with pregnancy and childbirth, but considered it to be complementary to maternity protection and pointed out that such a right was not provided in other Conventions. One government argued that parental leave did not impose more obligations on employers than maternity leave and that, even if the costs to society were slightly higher, this would be outweighed by the value of giving the parents a freer choice on how to care for their child.

On the other hand, many (some of whom expressed support in principle for parental leave) preferred that these instruments be confined strictly to questions of maternity protection at work and that rights to parental leave should be dealt with in other instruments. It was pointed out that the Workers with Family Responsibilities Recommendation, 1981 (No. 165), already contained provision for parental leave, and some suggested that this could become a subject for a separate future Convention. Others opposed the extension of the Recommendation to parental leave, citing obstacles of cost, practicality or national policy.

A number of responses supported the application of this provision to adoptive parents. The arguments concerning application of the instruments to adoptive parents are summarized and analysed in the Office commentary on Article 1 of the Convention.

A few comments were made concerning the expression in subparagraph (1) "the employed woman or the employed father of the child". One reply pointed out that these two terms were not comparable and one suggested that the provision be amended to refer to "the employed woman and her spouse", while another sought to extend the scope to the children of the spouse or the person with whom the male or female worker was living as a de facto couple. Another proposed that both parents be eligible for parental leave.

Two comments were received regarding the heading "Related types of leave". One considered this heading to be inaccurate, since parental leave was distinct from maternity leave and since the transfer of leave to the father under Paragraph 11 was simply a rearrangement of maternity leave and not a new type of leave. The other proposed to replace the heading with "Additional leave of absence".

As noted above, a majority of responses on this question preferred that these instruments be concerned solely with maternity protection and opposed the provision for parental leave in the Recommendation. Considering that parental leave is fundamentally concerned with family responsibilities of men and women workers, and is already dealt with in Recommendation No. 165 (in particular in Paragraph 22(1)), it seems unnecessary to include a provision in this Recommendation. The Office has therefore omitted former Paragraph 10.

11. In the case of the death of the mother before the expiry of postnatal leave, the employed father of the child should be entitled to take leave of a duration equal to the unexpired portion of the postnatal maternity leave. In the case of sickness or hospitalization of the mother after confinement and where the mother cannot look after the child, the employed father of the child should be entitled to leave in accordance with national law and practice.

Observations on Paragraph 11

Argentina. UIA. This text goes far beyond the basic purpose of ensuring maternity protection and should be deleted.

Belgium. CNT. Such leave should only be included in the Recommendation.

Canada. We would suggest more flexible language so as to allow parental leave to be taken by the father instead of postnatal maternity leave.

Ecuador. Agrees.

Egypt. FEI. Such leave would be contrary to national religious practice, customs and tradition that make childcare the responsibility of women. Under national legislation, leave is granted with the post-partum health care of the mother in mind.

France. Transfer of leave entitlement to the father in the case of sickness or hospitalization of the mother raises a problem of accumulation of leave (for both father and mother in relation to the same child), and this difficulty has not yet been resolved.

Germany. It seems logical, in the tragic event of the death or (serious) illness of the mother, to entitle the father to her unexpired portion of maternity leave.

BDA. It certainly makes sense to grant a father leave in the case of the mother's death, but there is no direct link with the aims and objectives of maternity protection at work. No provisions should be made here, as other Conventions and Recommendations would be more appropriate.

DGB. Paragraph 11 should remain.

Ghana. GEA. The father should be considered for parental leave only upon production of a medical certificate attesting that the child or mother is ill and determining the length of leave.

Guatemala. This Paragraph should be deleted.

India. Agrees.

HMS. Such leave should not automatically come to the father, but also should be available for a guardian.

Japan. This Paragraph should be deleted. See comments under Paragraph 10.

JTUC-RENGO. Supports such types of leave. See comments under Paragraph 10.

Republic of Korea. KEF. Such protection should be covered by other ILO Conventions. This Paragraph should be deleted.

Malaysia. The proposal is not practical. The employed father should utilize his annual leave entitlement.

MEF. This Paragraph should be deleted, as it widens the scope of maternity protection to include the father of the child and to give parental benefits that are outside the scope of maternity protection.

MTUC. See comments on Paragraph 10.

Malta. No legal provisions exist in this regard.

Morocco. UMT. The following wording is proposed: "In the case of sickness, hospitalization or death of the mother before the expiry of postnatal leave and where the mother cannot look after the child, the employed father of the child should be entitled to take leave of a duration equal to the unexpired portion of the postnatal maternity leave."

Netherlands. In the first sentence in Paragraph 11, a maternity protection component is wrongly transferred to another type of leave.

Poland. National legislation does not provide for a child's father taking advantage of maternity leave in the case of the mother's death.

Portugal. CIP. Given the social and cultural diversity among Members, this matter should be referred to domestic legislation.

UGT. This Paragraph should be included in the Convention.

Qatar. The sentence which begins "in the case of sickness or hospitalization" is the only appropriate sentence and should be substituted for Paragraphs 10 and 11.

Spain. It is difficult to agree to the proposed wording as the aim of the proposal is exclusive attention to the care of the child, which would imply duplicating the allowance and the original leave beyond what can be considered reasonable, thus constituting an excessively protectionist approach which would have negative repercussions on women's employment. This Paragraph overlaps with Convention No. 156 and Recommendation No. 165, which should be the instruments to address this subject.

UGT. Refers to its remarks concerning the Preamble and its observations concerning Article 1.

Switzerland. UPS. Paragraph 11 should be deleted.

United States. USCIB. This provision, which assumes that the circumstances and needs of the father are the same as the mother's would have been, is inappropriate and should be deleted.

Zimbabwe. Supports this Paragraph.

Office commentary

Relatively few comments were received concerning Paragraph 11. Most employers' organizations that responded, together with a number of governments, opposed the provision and proposed its deletion. They argued that it went beyond the scope of maternity protection, since it extended rights to the father, and should therefore not be included in a Recommendation on maternity protection. An employers' organization also considered that it should not be assumed that the needs and circumstances of the father were always the same as the mother's would have been. Workers' organizations and some governments supported the provision and a few of these sought to strengthen it. One workers' organization proposed that the father be entitled to leave equal to the unexpired portion of the postnatal maternity leave, whether in the event of death, sickness or hospitalization of the mother, while another wished to move the provision to the Convention. Since support for retention of the Paragraph was evenly balanced, the Office has retained it.

The Paragraph deals with two distinct situations: the death of the mother before the expiry of postnatal maternity leave, and the sickness or hospitalization of the mother after childbirth. The Office notes that, according to the information available to it, very few countries currently make special provision for such cases. Parental leave, as provided for in the Workers with Family Responsibilities Recommendation, 1981 (No. 165), could apply in both situations. The first situation, which seems to go beyond the scope of maternity protection, was little commented on. One government considered that it wrongly transferred a maternity protection component to another type of leave. Another government suggested that more flexible language be used, so as to allow the father to take parental leave instead of postnatal maternity leave. In this context, it is noted that Paragraph 11 does not confer a right to maternity leave on a father, but rather leave of which the title is not defined, but of which the duration is calculated by reference to the maternity leave entitlement that the mother would have had. In relation to the second situation, one government observed that the extension of leave to the father in the case of sickness or hospitalization of the mother raised a problem, which had not yet been resolved, of a duplication of entitlements, since both mother and father would have leave concurrently. However, another government considered that this provision was the only acceptable part of proposed Paragraphs 10 and 11.

One response pointed out that in either of the two situations covered, it would not necessarily be the father who assumed the responsibility of caring for the child. It therefore proposed that there should also be an entitlement to leave for a guardian. Since the provision on parental leave has been deleted from the text, if the provision were widened to provide rights to another person who has responsibility for care of the child, this may well go beyond the purpose of the instrument, which is maternity protection.

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